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ABSTRACT

Written for handicapped persons, their parents, and their advocates, the manual is intended to assist disabled persons to exercise their rights of citizenship. The first section addresses three major laws: P.L. 94-142 (the Education for All Handicapped Children Act), the Rehabilitation Act of 1973, and the Developmentally Disabled Assistance and Bill of Rights Act. The second section covers four specific consumer protection mechanisms required by the legislation: individualized program planning, nondiscrimination, least restrictive alternative, and procedural safeguards in education. The final section presents 10 case studies illustrating interpretation of the legislation and application of the consumer protection mechanisms. Case studies present a problem situation, statement of issues, and discussion. (CL)

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Advancing Your Citizenship

An Advocacy Manual for Persons with Disabilities

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Fourteenth Amendment (1)

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Introduction

The purpose of this manual is to assist disabled people and their advocates in further exercising their rights under the law. The first section introduces the reader to the three major pieces of federal legislation pertaining to handicapped individuals. This information provides an awareness of the rights to which disabled persons are entitled and upon which they can act. The second section overviews specific mechanisms which can be used in implementing these rights, while the final section is a demonstration of the application of these rights and mechanisms.

Federal legislation mandates that handicapped individuals are entitled to the rights of citizenship both in general and in regard to their special needs. Citizenship, however, is not advanced solely as a result of law. Law is only a written document which reflects an intent. While law is an essential prerequisite, it is not sufficient in and of itself to achieve the desired outcomes. More important is its implementation.

Appropriate implementation is dependent upon many sources including government officials, state agencies, professional service providers, and the general public. But in addition to these, disabled persons themselves have an important role to play in making the law work for them. This manual highlights the opportunities available to handicapped persons and thus may be used as a tool in advancing their citizenship.

It is of critical importance to this nation that equality of opportunity, equal access to all aspects of society and equal rights guaranteed by the Constitution of the United States be provided to all individuals with handicaps. (2)

Legislation

The three major pieces of federal legislation which pertain directly to handicapped individuals are discussed. These are:

- The Education for All Handicapped Children Act (Public Law 94-142)
- The Rehabilitation Act of 1973 (Public Law 93-112, as amended)
- The Developmentally Disabled Assistance and Bill of Rights Act (Public Law 94-103, as amended)

The Education for All Handicapped Children Act establishes the right of all handicapped students to a free appropriate public education and requires a number of specific activities and procedural safeguards for implementing this right. The Rehabilitation Act of 1973, as amended, provides for many employment-related services as well as including some far-reaching civil rights mandates for protecting the interests of all persons with disabilities. The Developmentally Disabled Assistance and Bill of Rights Act, as amended, also explicitly recognizes and defines rights of this popuation, authorizes service programs, and establishes significant protection mechanisms.

These Acts are the most significant legislation ever designed to protect handicapped persons. Knowledge of them will help the disabled and their advocates to achieve their rights as citizens and to obtain a broad range of services to which they are entitled.

> Most of the new legislation is based on recognition of the rights of the disabled as consumers rather than "alms seekers." Now it will take the aggressive action of the consumers themselves, their advocates, and their attorneys to enforce these laws and expand the legal rights of disabled persons . . . . Just as ethnic and racial minorities achieved meaningful success in vindicating their rights only when they joined fully in their own advocacy, so this next stage in the fight for full citizenship may add functional gains to theoretical victories for handicapped persons. As other minorities have learned, it is a long and difficult battle, never fully won. But dignity and self determination are the prize, and they are worth the extraordinary effort.
>
> *William Dussault and Lee A. Carty* (3)

The Education for All Handicapped Children Act

(Public Law 94-142)

The Education for All Handicapped Children Act of 1975 (Public Law 94-142) is significant for all handicapped students and their parents. It establishes specific procedures for the educational process of handicapped children and methods for their implementation. Public Law 94-142 assures that handicapped students receive proper educational programs in order to maximize their potential.

What is the Purpose of Public Law 94-142?

The purpose of the Act is to:

> assure that all **handicapped children** have available to them, . . . , a **free appropriate public education** which emphasizes **special education** and **related services** designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist states and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.

In essence, every handicapped child has a right to an education and is assured protection of his rights.

How are Handicapped Children Defined Under This Law?

Handicapped children are defined as those who are mentally retarded; hard of hearing; deaf; speech impaired; visually handicapped; seriously emotionally disturbed; orthopedically impaired or other health impaired; and children with specific learning disabilities. Only handicapped children who need special education in order to learn are covered by the Act.

States must serve all those between the ages of 3 and 18 by September 1, 1978 and those between the ages of 3 and 21 by September 1, 1980. However, these requirements do not apply to children aged 3 to 5 and 18 to 21, inclusive, in states in which education is not mandated for persons of these ages.

It should be pointed out that the word "children" is used throughout this section to indicate those persons covered by Public Law 94-142 (that is, those ages 3-21) since this is the term used in this law. Thus, "children" here includes adolescents and young adults.

> By any standards, Public Law 94-142 . . . is blockbuster legislation. Schools in every part of the nation are destined to feel its impact, and to be sturdier and more broadly "American" as a consequence.
>
> *Leroy V. Goodman* (4)

How is Free Appropriate Public Education Defined?

A free appropriate public education means special education and related services which:

1. are provided without charge to the parents at public expense;

2. meet the state education agency's standards;
3. include an age-appropriate education in the state involved; and
4. are provided in conformance with an individual education program.

What is Special Education?

Special education is defined as instruction designed to meet the unique needs of the handicapped student. It must be provided free of charge to the child's parents or guardians and may include classroom instruction, instruction in physical education, and instruction in the home, hospital, or institution.

What are Related Services?

Related services refer to a broad array of supportive services which may be required in order for a handicapped child to benefit from special education. They may include transportation, speech pathology, audiology, psychological services, physical and occupational therapy, recreation, counseling, diagnosis and evaluation, and early identification and assessment. These services must also be provided at no cost to the parents or guardians.

Does Your State Have to Provide an Education to All Its Handicapped Students?

Yes. In order to receive funding under Public Law 94-142, states must establish and prove that they will enforce the goal of providing a full educational opportunity to all handicapped students. This includes having available an adequate number of trained personnel to serve handicapped children, assuring the participation and consultation of parents, and, to the maximum extent appropriate, enabling handicapped children to participate in regular educational programs.

In addition, priority must first be given to children who are currently receiving no education. Secondly, it must be given to the most severely handicapped children within each disability grouping who are receiving an inadequate education. A state must, furthermore, prepare a detailed timetable for accomplishing its goal of appropriately serving all its handicapped children. It must also describe the facilities, personnel, and services needed to meet the goal.

Are the Schools Obligated to Actively Seek Out Unserved Handicapped Children?

Yes. Both state and local education agencies must maintain active child find programs. They must assure that all handicapped children, regardless of the severity of their handicapping condition, and who need special education and related services, are identified, located, and evaluated. They must, furthermore, develop and implement pro-

cedures to determine which children are receiving special education and related services and which are not.

What is an Individualized Education Program (IEP)?

An individualized education program (IEP) is a written statement developed jointly by a representative of the local education agency or intermediate educational unit; the teacher; the child's parents or guardians; and the child when appropriate. It must include a statement of:

1. the child's present levels of educational performance;
2. annual goals;
3. short-term instructional objectives (that is, the steps for reaching the goals);
4. specific services to be provided;
5. the extent to which a child will participate in regular educational programs;
6. the expected date for initiation and anticipated duration of services; and
7. objective criteria and evaluation procedures for determining whether or not the instructional objectives are being achieved.

Appropriate education under the law is defined, in part, by the IEP. (For further information on this topic ,see section on Individualized Program Planning, pp. 27-32.)

Must Every Child in Special Education Have an IEP?

Yes. All handicapped children receiving special education under Public Law 94-142 must have an IEP. An IEP must be developed either at the time a child enters a special education program or when he is counted for federal funding purposes. That is, the state can only receive federal monies for special education students who have IEPs. The IEP must then be reviewed at least annually and modified as needed.

Is There Protection Against Mislabeling Students?

Yes. Every state must assure that all procedures and instruments used for testing, evaluating, and placing children in special education are racially and culturally nondiscriminatory. Testing methods and materials must be administered in the child's primary language or mode of communication. No single instrument or procedure (e.g., an IQ test) may be the sole basis upon which educational programming decisions are made. Also, evaluations must be interpreted by a team of competent people, not by a single individual alone. Parents or guardians have the right to examine all relevant records related to their child's evaluation, and if they are dissatisfied, they may obtain an independent evaluation.

Do Handicapped Students Have the Right to be Educated in the Least Restrictive Environment?

Yes. The law stresses that, to the maximum extent appropriate, handicapped students must be educated with those who are not handicapped. They may be placed in special classes, separate schools, or other segregated settings only when the nature or severity of the handicap determines that education in regular classes, with the use of supplementary aids and resources, cannot be achieved satisfactorily. The least restrictive environment for each child must be determined individually and should be a fundamental consideration in developing IEPs. Education in regular classrooms should be the rule rather than the exception. (For further information on this topic, see section on Least Restrictive Alternative, pp. 38-42.)

In law and as national policy, education is today recognized as the handicapped person's right. Moreover, that right cannot be abridged, even on such grounds as that the necessary funds are not available, and handicapped children are seen as having a right not just to whatever kind of education someone else may see fit to provide them but to an education that is geared to their particular needs and aspirations. (5)

Can Handicapped Students be Educated in a Private School?

Perhaps. When it is determined by the school and parents that placement in a private school best meets the needs of a child, special education and related services must be provided in this setting free of charge to the parents or guardians. This provision applies only to those children referred to private schools by the state or local education agency, with the parent's permission, to fulfill its responsibilities of providing an appropriate education to every handicapped student. The state education agency must assure that private school programs into which handicapped students are placed meet the same standards that apply to public schools. It must assure that handicapped children and their parents are accorded all the rights to which they would be entitled in a public school setting including development of an IEP and procedural safeguards.

What are the Procedural Safeguards Guaranteed Under Public Law 94-142?

Handicapped children and their parents or guardians are accorded a number of procedural safeguards under this law. These relate to all issues involved in identification, evaluation, education placement, and provision of a free appropriate public education. The right to nondiscriminatory assessment, discussed above under the question, "Is There Protection Against Mislabeling Students," is one such safeguard. In addition, rights to confidentiality of information and due process procedures are guaranteed. That is, parents or guardians are entitled to be informed about all records maintained on their child, to review all such records, to refuse permission for the school to disclose information to anyone other than involved school personnel, and to challenge inaccurate records.

A parent or guardian is also guaranteed the opportunity to protest all educational decisions made by school officials in a due process hearing. Complaints must be heard by an impartial hearings officer; both parties to a hearing have specified procedural rights and rights to appeal. The child may remain in his current educational placement

during the course of such proceedings. If the child is not in school, he must be placed in a public school program pending the results of the hearings. (For further information on this topic, see section on Procedural Safeguards in Education, pp. 43-48.)

What Assurance is There that Educators will be Prepared to Work with Handicapped Children?

Each state must develop and implement a comprehensive system of personnel development. This means that it must provide in-service training for regular and special teachers, and support personnel and administrators. It must also assure that all personnel necessary to carry out the responsibilities under the law are adequately trained. In addition, it must develop means to acquire and disseminate relevant information to educational personnel involved in programs for handicapped children.

Does the Federal Government Pay Some of the Cost of Educating Handicapped Children?

Yes. The federal government is committed to paying a gradually increasing percentage of the extra costs involved in educating handicapped children. The Act authorizes $387 million to be spent on the program for fiscal year 1978 and up to $3.16 billion for fiscal year 1982. Each state's allotment, which is worked out through a formula, comes to the state education agency which then distributes it to local education agencies who have an approved plan for educating handicapped children. In addition to these monies, special incentive grants are available to states for developing preschool programs. Funds may be withheld from a state if it is found to be in noncompliance with the law. Likewise, a state may withhold funds from a local district found to be in noncompliance.

Can the Public be Involved in Implementing Public Law 94-142?

Yes. Two major vehicles provide opportunities for public participation under Public Law 94-142. The first of these relates to opportunities for public comment. In order for a state to receive funds under this Act, it must submit a state plan to the federal government detailing the ways in which it will meet its responsibilities. The state is required to hold public hearings, give adequate notice of hearings, and provide opportunity for comment by the general public on this state plan and all matters related to policies, programs, and mechanisms for educating handicapped children under the law. The public is guaranteed the right to review local education agencies' application to the state education agency for funds under the Act, and the evaluations of their programs sent to the state education agency.

The second means by which citizens may participate under this Act is the state advisory panel. Each state is required to have such a body composed of individuals concerned with the education of handicapped children. It must include handicapped individuals, teachers,

parents or guardians of handicapped children, state and local education officials, and administrators. The advisory panel's duties include:

1. advising the state education agency of unmet needs;
2. publicly commenting on proposed state rules or regulations; and
3. assisting the state in developing and reporting data and evaluations, all as they relate to the education of handicapped children.

Meetings of the state advisory panel are open to the public.

In Summary, What is the Significance of Public Law 94-142?

The Education for All Handicapped Children Act (Public Law 94-142) is significant in that it creates a broad mandate for providing to all handicapped students a free appropriate public education, and specifies in detail a number of related rights of handicapped children and their parents or guardians. Consumers of special education services and their advocates should avail themselves of these rights to services and of their opportunities to participate at all levels of special education programs.

FOR FURTHER INFORMATION ON PUBLIC LAW 94-142, SEE:

Public Law 94-142. **Education for all Handicapped Children Act of 1975.** November 29, 1975. U.S. Code 19, Sections 700 et seq.

Education of Handicapped Children: Implementation of Part B of the Education of the Handicapped Act. **Federal Register,** August 23, 1977, Part II (Final Regulations).

Epilepsy Foundation of America
1828 L Street, N.W.
Washington, D.C. 20036

Education for Children With Epilepsy: The Education for All Handicapped Children Act.

Although this booklet is directed toward children with epilepsy, it is equally applicable to all handicapped youngsters. Included are sections on the background and significance of Public Law 94-142; definitions; and due process. Appended is a listing of additional resources related to the education of handicapped children.

Amicus Special Report
National Center for Law and the Handicapped
1235 North Eddy Street
South Bend, Indiana 46617

". . . a free appropriate public education." P.L. 94-142 from the Advocacy Perspective. July 1977.

Combines under a single cover a series of articles on Public Law 94-142 which were published in **Amicus.** The following articles are included: Sources of Law: Right to an Equal Educational Opportunity; Understanding the Individualized Education Program (IEP); Know and Protect Your Child's Rights: A Parent's Guide; **Mattie T. V. Holladay:** Denial of Equal Education; Funding Formula Under P.L. 94-142; Fund-

ing Time Table; Definitions of Handicapping Conditions; The Educational Least Restrictive Alternative; Teaching the Teachers—An Administrator's Responsibility; An Advocate's View: The Role of the Surrogate Parent; Architectural Affirmative Action: A University with a New Concept; Science and Art in Mainstream Education: Toward the Normalization of the Handicapped Child; and Bibliography of Educational Materials.

McNair, D., Smith, B., & Crosson, A. **The Right of Handicapped Students to an Education.**

The booklet is written for parents of handicapped students and gives an overview of Public Law 94-142. It covers such topics as eligibility; least restrictive environment; the individualized education program; related services; evaluations; records; and due process procedures.

Exceptional Family Advocacy Center
Center on Human Development
University of Oregon
1590 Willamette Street
Eugene, Oregon 97401

The New Education Law: What Does It Mean? 1976-77

Reprints together several articles from the **Closer Look Newsletter** on Public Law 94-142. In addition to overviewing the law, the following articles are included: What Does it Take to Make a Law Work?; Suggestions for Parents: Find Out How "Section 504" Can Help You; and Does Due Process Scare You? Don't Let It! Also presented is a listing of special education rights guides from a number of states.

Report from Closer Look
National Information Center for the Handicapped
P. O. Box 1492
Washington, D.C. 20013

Your Rights Under the Education for All Handicapped Children Act: P.L. 94-142. March 1976.

Reviews federal legislation preceding Public Law 94-142, and then discusses the major provisions of this Act. Overviewed are funding mechanisms; state plan requirements including provisions for full services goal, due process, least restrictive alternative, non-discriminatory testing, individualized education plans, personnel development, and private schools; incentive grants for preschool services; confidentiality; and public participation. Appended is a listing of each state's special education department.

The Children's Defense Fund
1520 New Hampshire Avenue, N.W.
Washington, D.C. 20036

The Rehabilitation Act of 1973
(Public Law 93-112, as amended)

The federal rehabilitation legislation is important in a number of ways. Its various provisions cover a broad spectrum of the handicapped population, and a wide range of services are authorized under it. In addition, it includes civil rights guarantees applying to many areas of life. Thus, it is important that disabled persons and their families understand its provisions and be able to use them for their own benefit.

What is the Purpose of the Rehabilitation Act?

The purpose of this law for handicapped persons is:

> to develop and implement, through research, training, services, and the guarantee of equal opportunity, comprehensive and coordinated programs of vocational rehabilitation and independent living.

This legislation focuses primarily upon employment-related services, referred to as vocational rehabilitation services. However, other provisions provide for a broader range of social services and civil rights.

Which Handicapped Persons are Eligible for Vocational Rehabilitation Services?

Under the law, any individual is eligible for services who:

1. has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment; and
2. can reasonably be expected to benefit in terms of employability from vocational rehabilitation services.

This definition of eligible handicapped individuals applies to employment-related services. Many additional handicapped persons are covered by the **civil rights** and **independent living** provisions of the legislation which are examined later in this section.

In the past, appeals made to employers for them to hire handicapped people were made in terms of money — that it was good business to hire the handicapped. This is a thing which handicapped people have come to resent, for they see the hiring of disabled people as an issue of human rights — a recognition by employers of the moral rights of all Americans to work.

Richard T. Sale (6)

What are Vocational Rehabilitation Services?

Vocational rehabilitation, or employment-related, services are many and varied. They include:

1. Evaluation and diagnosis, including psychiatric and psychological examinations;
2. Counseling, guidance, referral, placement, and post-employment services and assistance in securing services from other agencies;

3. Vocational training, including personal and vocational adjustment, training materials, and services to families;
4. Physical and mental restoration services, including corrective surgery or therapeutic treatment, hospitalization, prosthetic and orthotic devices, eyeglasses and visual services, special services such as transplantation, dialysis, artificial kidneys, etc., and diagnosis and treatment for mental and emotional disorders;
5. Maintenance;
6. Interpreter and reader services;
7. Recruitment and training for new employment opportunities;
8. Rehabilitation teaching, orientation, and mobility services for the blind;
9. Occupational licenses, tools, equipment, and initial stocks and supplies;
10. Transportation; and
11. Telecommunications aids.

Authorized services are not limited to these; they may include any goods or services necessary for helping a handicapped individual become employable.

How is Eligibility for These Services Determined?

Handicapped individuals who reasonably may be expected to achieve employability are eligible for rehabilitation services. All applicants for such services are entitled to an evaluation of their rehabilitation potential. This may include:

1. Diagnosis to determine the existence of substantial handicap and the need for vocational rehabilitation services;
2. Comprehensive evaluation of medical, psychiatric, psychological, vocational, educational, cultural, social, and environmental factors as they relate to employability;
3. Appraisal of work behaviors and abilities;
4. Referral; and
5. Provision of vocational rehabilitation services for up to 18 months to determine the existence of a handicap and rehabilitation potential.

Any decision that an individual is not capable of achieving a vocational goal must be made in full consultation with that individual (or his parents or guardians if appropriate). Any determination of ineligibility must furthermore be based upon certification that the evaluation of rehabilitation potential demonstrates beyond doubt that the individual cannot achieve a vocational goal at that time. Decisions of ineligibility must be reviewed at least annually.

Can the Severely Handicapped Receive Vocational Rehabilitation Services Under This Act?

Yes. As a matter of fact, rehabilitation legislation clearly requires that the most severely handicapped individuals are to receive priority. In order to receive federal rehabilitation funding, each state is required to describe the method to be used in expanding and improving services to the most severely handicapped. It must also assure that priorities for providing services must be directed toward first serving those with the most severe handicaps.

What are Severe Handicaps?

A severe handicap is defined as any disability "which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respiratory or pulmonary dysfunction" and others.

Citizen participation is probably the most effective tool to counteract the tendency to encourage a sense of helplessness and dependency on the part of the clients of rehabilitation agencies.
Daniel Thursz (7)

Are Rehabilitation Clients Entitled to an Individual Service Plan?

Yes. An individualized written rehabilitation program (IWRP) must be developed for every handicapped person eligible for vocational rehabilitation services. It must be developed jointly by the vocational rehabilitation counselor or coordinator and the handicapped individual and his parents or guardians when appropriate. It must be jointly reviewed at least annually. As part of the review, clients have the right to have the plan's terms redeveloped and must agree to it. The IWRP must include:

1. Long-range rehabilitation goals;
2. Related intermediate objectives (steps toward achieving the goals);
3. Services to be provided;
4. Date of initiation and anticipated duration of each service; and
5. Objective criteria for evaluating achievement of goals and objectives.

The emphasis in IWRPs is to be placed on vocational goals. (For further information on this topic, see section on Individualized Program Planning, pp. 27-32.)

If a client disagrees with his IWRP as prepared by his rehabilitation counselor, he has the right to request its review by the state rehabilitation agency director. When the client is still dissatisfied after this state-level review, he may request a review by the federal government.

How do States Access Federal Monies in Order to Provide Vocational Rehabilitation Services?

In order to be eligible for funds, every state must submit to the federal government a state plan for vocational rehabilitation services. It must designate a single state agency to administer the plan. However, when under state law there is earmarked a separate agency to serve the adult blind, that agency may administer that part of the plan that pertains to the blind. The state plan, among other requirements, must indicate policies, plans, and methods for carrying out the plan. It must assure the undertaking of continuing statewide studies of needs of the handicapped and how these needs can be met. It must guarantee that the administering agency or agencies will take into account the views of service consumers and providers about general policy matters. Before a state may be funded for vocational rehabilitation services, the administering federal agency must approve the state plan. It may withhold funding if the state is found to be out of compliance with its plan.

Does the Rehabilitation Legislation Authorize Any Special Projects or Activities?

Yes. Rehabilitation legislation provides assistance for a number of special projects and activities which support vocational rehabilitation goals. Some of these are:

1. Innovation and expansion grants which are given to the states for the purpose of planning, preparing for, and initiating special programs to expand the provision of vocational rehabilitation services;
2. Research and demonstration activities related to rehabilitation of the handicapped;
3. Training to provide more rehabilitation personnel, increase their skills, and improve training methods;
4. Construction, staffing, and planning of rehabilitation facilities;
5. Provision of vocational training services to handicapped persons;
6. Establishment of comprehensive rehabilitation centers in communities which can provide a broad range of services to handicapped individuals;
7. Establishment of community service employment pilot programs which can provide job opportunities for handicapped persons who have poor employment prospects; and
8. Development of projects with industry in which training and employment in realistic work settings are provided.

When those active in the disabled movement use the term "independent living," they are referring to their ability to participate in society to work, have a home, raise a family, and generally share in the joys and responsibilities of community life. "Independent living" means the ability to choose where to live and how; it means the person's ability to carry out activities of daily living that non-disabled people often take for granted.
Susan Stoddard (8)

Are Independent Living Services Authorized Under the Rehabilitation Legislation?

Yes. The 1978 amendments to the Rehabilitation Act of 1973 (Public Law 95-602), for the first time, provide for the provision of independent living services. These provisions mark a significant departure from traditional vocational rehabilitation practice in that services may be made available to handicapped individuals who are not able immediately to become employable but who can learn to live and function independently. This special independent living program may include centers for independent living and independent living services for older blind individuals.

What are Client Assistance Projects?

Client Assistance Projects are another important special program authorized by the Rehabilitation Act. These Projects, located in various areas around the United States, have as their purpose to inform clients of available benefits under the rehabilitation legislation and to assist clients in their relationships with service providers. In addition, they are expected to help clients in pursuing legal, administrative, and other appropriate remedies to protect client rights under this legislation. The staff of these Projects may not be employed by any rehabilitation program funded under the Act but must have reasonable access to state and local policymaking and administrative personnel. Clients may not be discouraged by the state vocational rehabilitation agency from utilizing services provided by Client Assistance Projects.

What is the Federal Government's Role in Employing Handicapped Persons?

Rehabilitation legislation stipulates that every federal department and agency must plan and implement a program of affirmative action for hiring, placing, and advancing in employment handicapped individuals. Progress in this area is to be monitored on a periodic basis by an Inter-agency Committee on Handicapped Employees and the Civil Service Commission.

What is the Architectural and Transportation Barriers Compliance Board?

The legislation establishes a federal Architectural and Transportation Barriers Compliance Board. It is composed of federal executive branch representatives and members of the general public including handicapped individuals. Its functions include the following:

1. To insure compliance with architectural barriers legislation;
2. To investigate alternative approaches to architectural, transportation, communication, and attitudinal barriers;
3. To determine the measures being taken to eliminate barriers;
4. To promote compliance with and use of the International Accessibility Symbol in public facilities;

5. To recommend legislation and administrative measures to eliminate barriers;
6. To establish minimum guidelines and standards related to barriers; and
7. To insure that public conveyances are accessible.

The Board is authorized to act to insure compliance, including initiating civil actions in court, and to provide technical assistance on compliance.

What are the Requirements for Affirmative Action?

Any business or agency which has a contract with the federal government for over $2,500 is required to take affirmative action to employ and advance in employment qualified handicapped individuals. Affirmative action is a deliberately planned effort to provide equal employment opportunities for persons who are handicapped. The Department of Labor is responsible for investigating complaints in this regard and for finding remedies. (For further information on this topic, see section on Nondiscrimination, pp. 33-37.)

What are the Requirements for Nondiscrimination?

The Rehabilitation Act of 1973 introduced a far-reaching civil rights mandate. Section 504 states:

> No otherwise qualified handicapped individual in the United States, . . . , shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any executive agency or by the United States Postal Service.

This provision applies to all handicapped persons, not just to those who are eligible for vocational rehabilitation services. Given the vast range of social services funded in whole or in part by the federal government, the potential impact of Section 504 is indeed tremendous. The 1978 amendments to this legislation specify that the remedies available under the 1964 civil rights act are also available to handicapped individuals under Section 504. In addition, they allow a court to award attorneys' fees in 504 litigation. This provision will certainly make it easier for handicapped persons to find lawyers to represent them. (For further information on this topic, see section on Nondiscrimination, pp. 33-37.)

In Summary, What is the Significance of the Rehabilitation Legislation?

This law can be used to help handicapped persons prepare for and find jobs. Consumers also have the right to be involved in planning their own goals and services. In addition, many other special programs, including independent living programs, may be made avail-

able to help meet the needs of those who are disabled. Requirements for affirmative action and nondiscrimination can furthermore be used to develop opportunities for handicapped persons. The legislation thus contributes to the achievement of as normal and full a life as possible for such individuals.

FOR FURTHER INFORMATION ON PUBLIC LAW 93-112, AS AMENDED, SEE:

Public Law 93-112. **Rehabilitation Act of 1973.** September 12, 1973. U.S. Code 29, Sections 700 et seq.

Public Law 93-516. **Rehabilitation Act Amendments of 1974.** December 7, 1974. U.S. Code 29, Sections 700 et seq.

Public Law 95-602. **Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978.** November 6, 1978. U.S. Code 29, Sections 700 et seq.

Vocational Rehabilitation Programs: Implementation Provisions. **Federal Register,** December 5, 1974, **39**(235).

Co-ordinating Council for
Handicapped Children
407 South Dearborn Street, Room 1090
Chicago, Illinois 60605

Des Jardins, C., & Hull, R. **Rights Handbook for Handicapped Children and Adults,** pp. 70-75.

Overviews the major provisions of Public Law 93-112, including definitions, eligibility, services, and funding. A section on employment reviews the special rights of handicapped persons in this area.

Department of Health, Education, and
Welfare
Office of the Assistant Secretary for
Human Development
Office for Handicapped Individuals
Washington, D.C. 20201

Federal Assistance for Programs Serving the Handicapped, pp. 27-28, 148-153.

Discusses the rehabilitation formula grant program, including uses and restrictions, eligibility requirements, and application procedures. Also presented is information on rehabilitation special projects, research and demonstrations, and training.

Department of Health, Education, and
Welfare
Public Health Service
National Institutes of Health
The Commission for the Control of
Epilepsy and Its Consequences
Washington, D.C.

Rehabilitation Act of 1973 and the 1974 Amendments. In **Plan for Nationwide Action on Epilepsy** (Vol. III), pp. 131-155.

Overviews this legislation in terms of benefits provided, structure of the service organization, funding, eligibility requirements, and issues and opportunities. A separate part discusses Sections 502, 503, and 504 of the Act.

Arkansas Rehabilitation Research and
Training Center
University of Arkansas
Fayetteville, Arkansas 72701

Critical Issues Involved in the Rehabilitation of the Severely Handicapped.

Identifies some issues involved in fulfilling the congressional mandate to provide rehabilitation services to severely disabled individuals. Topics include such concerns as economic and funding considerations,

the rehabilitation process and personnel, extended evaluation, job development, and consumer participation.

The Role of Vocational Rehabilitation in Independent Living.

Presents an overview of rehabilitation efforts to provide independent living (I/L) services to severely handicapped persons. Additional topics include administrative issues and concerns, rehabilitation counselor concerns in the provision of I/L, consumer roles and concerns in I/L, provision of I/L through vocational rehabilitation, and program evaluation of I/L.

Arkansas Rehabilitation Research and Training Center
University of Arkansas
Fayetteville, Arkansas 72701

The Developmentally Disabled Assistance and Bill of Rights Act

(Public Law 94-103, as amended)

The concept of developmental disabilities first appeared in federal legislation in 1970 as Public Law 91-517. Since that time, this legislation has been substantially amended twice as Public Laws 94-103 (1975) and 95-602 (1978). These Acts all recognize that

> individuals with disabilities occurring during their developmental period are more vulnerable and less able to reach an independent level of existence than other handicapped individuals who generally have had a normal developmental period on which to draw.

The legis'ation is designed to assist in meeting the needs of developmentally disabled individuals, particularly those not covered by other health, education, or welfare programs. It addresses a number of issues relevant to such persons, their parents, and their advocates.

What are Developmental Disabilities Under This Law?

Developmental disabilities are currently defined as:

> A severe, chronic disability of a person which—
>
> 1. is attributable to a mental or physical impairment or combination of mental and physical impairments;
> 2. is manifested before the person reaches age 22;
> 3. is likely to continue indefinitely;
> 4. results in substantial functional limitations in 3 or more of the following areas of major life activity:
>   a. self-care
>   b. receptive and expressive language
>   c. learning
>   d. mobility
>   e. self-direction
>   f. capacity for independent living
>   g. economic self-sufficiency; and
> 5. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

This definition covers such disabilities as mental retardation, cerebral palsy, epilepsy, autism, and dyslexia, as well as other conditions meeting the criteria. It is intended to result in assistance to a broad range of persons who can benefit from the rights, planning, and services provided for in the legislation.

What is wanting is not the declaration of rights. What is wanting is their reality. Rights we have in abundance. A civil reality we have yet to create . . . Congress, in all that it has done in the last five years, has shown itself most responsive to and fully knowledgeable about both the explosion of rights at the hands of the courts and about the assertion of rights by disabled persons themselves . . . developmentally disabled citizens should not be merely one-shotters, but should be repeat players in the game of asserting their rights and in translating them from paper to reality. To come out ahead, they need to be able to stay at the game of the assertion and realization of their rights day by day, month by month, and year by year.

Thomas K. Gilhool (9)

Does the Developmental Disabilities Act Address Rights?

Yes. A very significant section of the developmental disabilities legislation delineates a number of rights of developmentally disabled citizens. These include the following:

1. The right to appropriate treatment, services, and habilitation for developmental disabilities;
2. The treatment, services, and habilitation should be designed to maximize the developmental potential of each individual being served and should be provided in the setting that is least restrictive of the person's personal liberty;
3. Federal and state governments should not fund institutions or other residential facilities which do not provide appropriate treatment, services, or habilitation or which do not provide adequately for diet, medical care, control of physical or chemical restraints, visitation opportunities, and fire and safety standards; and
4. All programs should meet standards which are designed to assure the most favorable outcome for those served, including standards adjusted for the size of the institutions which are at least comparable to those written under Title XIX of the Social Security Act.

These rights are recognized in addition to any constitutional or other rights which are afforded to all citizens. It was recognized during their drafting that these minimum standards only address basic human needs and do not assure adequate habilitation and treatment programs. They are not intended to replace any other standards which are applicable to facilities or service quality.

Does This Act Require Individual Service Plans?

Yes. As a means of assuring and protecting rights, every program receiving developmental disabilities monies must have in effect an individualized habilitation plan for every person served. This plan must be in writing and must include:

1. long-term goals;
2. intermediate objectives (steps toward achieving the goals);
3. means of implementation;
4. measures of progress;
5. specific services to be provided;
6. the agencies which will deliver the services;
7. the service providers; and
8. timelines.

A program coordinator must be designated who is responsible for the implementation of the plan and for attending to the total spectrum of

the client's needs. The plan must be reviewed at least annually. The individualized habilitation plan must be developed jointly by service agency personnel, the client, and his parents or guardians when appropriate. (For further information on this topic, see section on Individualized Program Planning, pp. 27-32.)

How Does this Act Speak to the Need for Advocacy?

Public Law 94-103, as amended, requires that every state receiving funds under the Act must have in operation a system for the protection and advocacy of rights of persons with developmental disabilities. The system must have the authority to pursue legal, administrative, and other remedies for the achievement of its goals. Recognizing the inherent conflict between the role of a service delivery unit in delivering services and in protecting the human and legal rights of developmentally disabled persons, the law specifies that the advocacy system must be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities. The system must have the authority to review all complaints regarding infringement of rights and denial of benefits.

Consumers, whether they are disabled people or advocates for the disabled, have the right and the obligation to play a leading role in the planning and delivery of services that affect their lives. They have a right to know that their share of the tax dollars is spent in ways that are beneficial to them. Consumers have the same obligation as other citizens to see that this occurs.
Frank Warren (10)

Does the Act Provide a Way to Assure that Services are Effective?

Yes. Developmental disabilities legislation recognizes that means must be provided to assure quality and appropriate services to developmentally disabled individuals. Although detailed standards are not included in the bill, there is a requirement that the Secretary of Health, Education, and Welfare develop a comprehensive system for evaluating services by October 1, 1979. This system is to provide objective measures of the developmental progress of service clients using data from the individualized habilitation plans and provide a method of evaluating programs. The intent is that agencies and facilities will evaluate the effectiveness of services on the basis of progress made by individuals in mastering complicated tasks and developing the ability to live more normally in society. The evaluation system must also assure the protection of confidentiality of records. It is the intention of this provision that the evaluation mechanism be made available to the states and that they be required to use this mechanism, as a condition for receiving developmental disabilities funding, by October 1982.

It is also required that the state plan assess the adequacy of the skill level of persons serving developmentally disabled individuals. In addition, the adequacy of the state's program for training service providers must be reviewed.

What is the State Planning Council?

Every state receiving funds under the developmental disabilities legislation is required to have a State Planning Council. The membership of the Council is appointed by the governor. At least one-half of the members must be persons with developmental disabilities or their parents, guardians, or immediate relatives. In addition to this con-

sumer representation, membership must also include persons representing the principle state agencies, local agencies, higher education training facilities, nongovernmental agencies, and groups concerned with services to developmetally disabled persons. The Council must be adequately staffed.

How Does the Developmental Disabilities State Planning Council Help This Population?

In general, the Council is intended to serve as an advocate for the developmentally disabled population. More specifically, it is responsible for monitoring, reviewing, evaluating, and coordinating state programs. That is, the Council must:

1. assist in developing a state plan for providing services to developmentally disabled persons;
2. monitor, review, and evaluate the implementation of the state plan;
3. to the maximum extent feasible, review and comment on all state plans in the state which relate to programs affecting persons with developmental disabilities; and
4. submit requested reports.

What is the Developmental Disabilities State Plan?

Every state must submit to the federal government a state plan for the provision of services for persons with developmental disabilities in order to receive developmental disabilities funding. It must be prepared jointly by the State Planning Council and the administering state agency. It must address a broad range of issues related to serving developmentally disabled individuals.

What Issues Does the State Plan Have to Address?

Specifically, among other requirements, the state plan must:

1. describe specific objectives to be achieved and the programs and resources that will be used to achieve them;
2. describe the extent and scope of services provided to persons with developmental disabilities and how the federal developmental disabilities funds will be used to complement and augment rather than duplicate these services;
3. assure that services and service facilities meet federal standards including those related to accessibility, individualized habilitation plans, and human and civil rights;
4. assure the competency of service delivery personnel, and the planning and implementation of a service delivery evaluation system;
5. provide for maximum utilization of community resources and volunteers; and

> Having these laws on the books does not guarantee that they will be observed . . . securing a declaration of legal rights is only the first step. Monitoring, muckraking, lobbying, political pressure and continuing judicial intervention must all be used by advocates in order to assure that the rights of the mentally retarded are actually enjoyed.
>
> *Paul Friedman* (11)

6. assess and describe the state's provision of priority services.

What are Priority Services?

The 1978 amendments to the developmental disabilities legislation require that states make a major commitment to meeting unmet needs in at least one of four areas of priority services. These areas are:

1. **case management services** (that is, services that will assist persons with developmental disabilities in gaining access to needed social, medical, educational, and other services, as well as follow-along and coordination services);
2. **child development services** (that is, services that will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention, counseling and parent training, early identification, and diagnosis and evaluation);
3. **alternative community living arrangement services** (that is, services that will assist persons with developmental disabilities in maintaining suitable community residential arrangements, including in-house services such as attendance, family support services, foster care services, group living services, and respite care); and
4. **nonvocational social-developmental services** (that is, services that will assist persons with developmental disabilities in performing daily living and work activities).

The state has the option of adopting one other priority area in addition to these.

These areas are generally recognized as both extremely important and in need of improvement. It is expected that this focusing upon specific service areas will result in significant, visible improvements in services to the developmentally disabled population.

What is the Role of University Affiliated Facilities?

Grants are available under the developmental disabilities legislation to support university affiliated facilities (UAFs). These are important since they are designed to provide services, as well as training for service providers, which would not otherwise be available. UAFs are intended to operate demonstration projects for providing services to the developmentally disabled; to provide interdisciplinary training programs for persons needed to serve the developmentally disabled; to disseminate research findings; and to identify research needs. Also authorized are the planning and establishment of satellite centers which are intended to deliver services to consumers in areas where adequate services are not otherwise available.

UAFs are expected to comply with federal standards which relate both to the special needs of persons with developmental disabilities and to UAFs' authorized activities. The provisions for university affiliated

facilities and their satellite centers are intended to supplement community resources and therefore make a major contribution to alternatives to deinstitutionalization.

What Assistance Can Be Provided by Developmental Disabilities Special Project Grants?

Public Law 94-103, as amended, establishes a special project authority for the purpose of dispensing grants for a variety of activities related to serving persons with developmental disabilities. That is, grants may be awarded for such endeavors as:

1. expanding or improving a broad array of services, particularly priority services;
2. improving protection and advocacy services;
3. public awareness and education programs;
4. coordinating community resources;
5. technical assistance relating to services and facilities;
6. demonstrating innovative ways of recruiting and retaining professionals to serve developmentally disabled persons in rural areas;
7. developing or demonstrating new or improved service techniques; and
8. gathering and disseminating information relating to developmental disabilities.

Procedures must be developed for insuring the participation of consumers in determining priorities for these grants. Special projects are intended to be addressed to regional or national problems.

In Summary, What is the Significance of the Developmental Disabilities Legislation?

This legislation recognizes the special needs of persons who have substantial handicaps occurring during childhood or adolescence. Various resources for serving developmentally disabled individuals, such as state developmental disabilities programs, university affiliated facilities, and special project grants, are authorized. In addition, the developmental disabilities legislation strongly and unequivocally addresses the rights of such persons and supports advocacy on their behalf. Consumers and advocates should be aware of this legislation in order to avail themselves of the many services and opportunities which it may provide.

FOR FURTHER INFORMATION ON PUBLIC LAW 94-103, AS AMENDED, SEE:

Public Law 94-103. **Developmentally Disabled Assistance and Bill of Rights Act.** October 4, 1975. U.S. Code 42, Sections 6000 et seq.

Public Law 95-602. **Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978.** November 6, 1978. U.S. Code 42, Sections 6000 et seq.

Developmental Disabilities Program: Regulations on Grants to States, Nonprofit Agencies, Colleges, and Other Organizations. **Federal Register,** January 27, 1977.

Research and Training Center in Mental Retardation
P.O. Box 4510
Texas Tech University
Lubbock, Texas 79409

Andrews, J. The Evaluation and Congressional Intent of the DD Legislation. In G. J. Bensberg & C. Rude (Eds.), **Advocacy Systems for the Developmentally Disabled,** pp. 32-37.

Discusses the congressional history of Public Law 94-103 and its major components. Emphasis is placed on the Bill of Rights and the protection and advocacy systems.

Department of Health, Education, and Welfare
Public Health Service
National Institutes of Health
The Commission for the Control of Epilepsy and Its Consequences
(DHEW Publication No. [NIH] 78-278)
Washington, D.C.

The Developmentally Disabled Assistance and Bill of Rights Act of 1975 (P.L. 94-103). In **Plan for Nationwide Action on Epilepsy** (Vol. III), pp. 156-166.

Reviews this piece of legislation by outlining its major components. Included are discussions of various benefits provided, the governmental organization responsible for implementation, funding, eligibility considerations, and issues and opportunities.

Rehabilitation Research and Training Center in Mental Retardation
Center on Human Development
University of Oregon
Eugene, Oregon 97403

Litvin, M., & Chavan, A. **Developmental Disabilities: A Legislative Overview** (Center Paper No. 104).

Traces the legislative history of the developmental disabilities movement. Included are historical precedents and overviews of the 1970 developmental disabilities act and the 1975 act.

Federal Programs Information and Assistance Project
1522 K Street, N.W.
Suite 1030
Washington, D.C. 20005

Stripling, T., & Hamilton, R. **The Developmental Disabilities Program.**

Provides an in-depth analysis of developmental disabilities legislation. Major topics discussed are: historical background; goals and services; eligibility criteria and application process; planning process; funding; and relationship with other programs.

DD Themes and Issues
Developmental Disabilities Technical Assistance System
Suite 300 NCNB Plaza
Chapel Hill, North Carolina 27514

Wiegerink, R. **Two Faces of the National Developmental Disabilities Movement.**

Analyzes both the problems and progress of the developmental disabilities program. Emphasis is placed on the improvements brought about by Public Law 94-103.

Consumer Protection Mechanisms

Four mechanisms designed to protect handicapped individuals and which are required by federal legislation are discussed. These are:

- Individualized program planning
- Nondiscrimination
- Least restrictive alternative
- Procedural safeguards in education

Individualized program planning is a formalized mechanism for delivering services to handicapped individuals. It facilitates communication and cooperation among all persons involved in the provision of services; requires meaningful consumer involvement in the planning process; and provides a basis for meeting all the service needs of disabled clients. The **nondiscrimination** mandate unequivocally prohibits the exclusion of qualified handicapped persons from any program or service which receives federal monies. It is therefore a tool which can assist in providing equality of opportunity in a wide variety of settings. The right to **least restrictive alternative** is an additional means by which disabled citizens may participate in society as equal members. This right is applicable to a number of service programs and demands that, to the greatest extent feasible, handicapped individuals have the opportunity to live as normal a life as possible. **Procedural safeguards in education** are legislated for the purpose of protecting individual rights and assuring the appropriateness and effectiveness of special education. They are mechanisms by which consumers may exercise their rights and responsibilities in the education process and illustrate the nature of such safeguards which are increasingly prevalent in the service system.

These four consumer protection mechanisms are established by law in order to allow meaningful consumer involvement in both society at large and the delivery of specific services. They are important tools with which disabled persons and their representatives may advocate for services and equal opportunity.

The civil rights movement of the past decade established a climate of active concern for the social, economic, and political issues affecting the human rights of many Americans. Within this climate, handicapped citizens have raised their voices in an effort to awaken America's collective consciousness to the needs and concerns of the physically and mentally handicapped. The disabled are a large minority group but most people would not expect them to take such dramatic action. Civil rights concepts are equated with racial minorities. For another group of citizens outside the boundaries of the equal rights movement to join the fight has presented a challenge not only to civil rights advocates but to every individual who does not understand the needs and problems of the disabled.

Patricia J. Thoben (12)

Individualized Program Planning

Individualized program planning is an extremely important part of the services delivered to persons with disabilities. Its significance relates both to the planning and evaluation of individual services and to the opportunities it presents for consumer involvement. Appropriate development and implementation of individual service plans can go far in guaranteeing that a person's service needs are fully met.

Does the Law Require Individualized Program Planning?

Yes. All major pieces of federal legislation relating to handicapped individuals require an individualized program plan (IPP) for persons receiving services. Although the titles vary across the different laws, their meaning and intent are essentially the same. IPPs are referred to as:

1. **individualized habilitation plan** (IHP) (Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103, as amended);
2. **individualized written rehabilitation programs** (IWRP) (Rehabilitation Act of 1973, Public Law 93-112, as amended); and
3. **individualized education program** (IEP) (Education for All Handicapped Children Act, Public Law 94-142).

All these forms of the IPP are a way to formalize an individual's treatment. Through them, services are planned and documented, procedures are specified for evaluating the effectiveness of services, and providers of different kinds of services can work together to meet all of a client's needs. IPPs are an approach to meeting the unique needs of every individual being served.

What Has to Be In an IPP?

The IPPs under all three pieces of legislation must meet the following requirements:

1. They must be in writing;
2. They must be developed jointly by the primary service providers, the client, and, when appropriate, the client's parents or guardians;
3. They must specify:
   a. the long-term goals and intermediate objectives to which the services are directed;
   b. the strategies to be used in meeting the goals and objectives;
   c. the specific services to be provided;
   d. the dates for the beginning, and anticipated duration, of services;

e. objective criteria, evaluation procedures, and a schedule for determining whether or not the goals and objectives are being met; and

4. IPPs must be reviewed at least annually.

Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever their origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

THE UNITED NATIONS DECLARATION ON THE RIGHTS OF DISABLED PERSONS (13)

Should IPPs Include All of a Client's Service Needs?

Yes. IPPs are intended to include all the services needed by a client in order to participate successfully in a program. That is, it is recognized that many different services may be necessary for enabling an individual to achieve his potential. For example, a child may need speech therapy and counseling so as to benefit from a special education program. A rehabilitation client may need a prosthetic device and maintenance payments in order to complete an on-the-job training program. Therefore, all needed services must be integrated into a total program for maximum effectiveness, and that program should be reflected in the IPP.

What Does the Education for All Handicapped Children Act Say About Meeting All of a Client's Service Needs?

Individualized education programs under Public Law 94-142 must specify all the services needed by children in order to benefit from special education. In fact, a free appropriate public education is, in part, defined as "special education and **related services"** (bold added). In turn, related services mean

> transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services . . .) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children.

Thus, it is provided that a broad array of a person's service needs may be addressed as these relate to successful participation in special education.

What Does Developmental Disabilities Legislation Say About Meeting All of a Client's Service Needs?

The "Habilitation Plans" provision assumes that a disabled person will need a broad array of services from different agencies. It requires that a client's individual plan specify all the services to be provided, each agency which is to deliver services, the personnel and their qualifications necessary for the provision of these services, and the roles and objectives of all parties to the implementation of the plan. It is also required that every service client have a program coordinator who is ultimately responsible for a plan's implementation.

What Does Rehabilitation Legislation Say About Meeting All of a Client's Service Needs?

Rehabilitation legislation likewise recognizes that a broad array of services may be required in order to assist programing clients adequately. A wide spectrum of services are authorized to be provided to clients working toward vocational goals. In addition, independent living programs are authorized for persons unable to achieve employability. Many services may also be provided to such individuals. In both cases, the individualized written rehabilitation program is expected to address all service needs related to these programs.

Why Are These Full Service Provisions Important?

It is clear that federal legislation is directed toward meeting all the service needs of handicapped individuals. Effective integration and provision of an array of services work toward this end. Consumers and their advocates must be certain that all appropriate services are specified in the treatment plan. Once this occurs, they have a solid foundation upon which to advocate for the actual provision of these services.

Can the Client Be Involved in IPP Development?

Yes. The federal legislation requiring individualized program plans requires consumer involvement in every stage of their development. It is recognized that those being served have an interest in determining the nature of available services, the conditions under which they are offered, and the desired outcomes of services; it is assumed that consumer involvement will maximize the effectiveness of services.

Specifically, the laws demand the following consumer participation. Public Law 94-142 requires that the individualized education program be developed in a meeting which is attended by "the parents or guardian of such child, and, whenever appropriate, such child." The Rehabilitation Act of 1973, as amended, states that a client's individualized written rehabilitation program must be determined jointly by the vocational rehabilitation counselor or coordinator "and the handicapped individual (or, in appropriate cases, his parents or guardians)." Finally, the habilitation plan mandated by the Developmentally Disabled Assistance and Bill of Rights Act must be written in cooperation with "such person, and . . . where appropriate, such person's parents or guardian or other representative."

Individualized program plans under the three acts must be reviewed at least annually. In all cases, the consumer participants in the plan's development must be given the opportunity to be involved in the review. They have the right to be included and to participate in any revisions which may be found necessary. The law is thus unequivocal that consumers must be involved in the provision of services on an ongoing, meaningful basis.

What Can You Do If You Don't Agree With Your IPP?

Two pieces of federal legislation specifically speak to this question. First, under Public Law 94-142, parents have the right to an impartial due process hearing if they and the school cannot agree on an individualized education program. This procedure is described more fully in the section entitled "Procedural Safeguards in Education," pp. 43-48.

Second, rehabilitation legislation (Public Law 93-112, as amended) allows dissatisfied clients to challenge their individualized written rehabilitation program. Clients, or in appropriate cases their parents or guardians, may request their state rehabilitation director to review their IWRP. This review must be done by the director himself, and his final decision must be made in writing. If the client is dissatisfied with the state director's decision, he may appeal the decision to the federal Department of Health, Education, and Welfare.

How Can the IPP be Used to Evaluate an Individual's Services?

Individualized program plans can be a precise monitoring device by which treatment appropriateness and effectiveness for an individual can be documented. Since the plans must specify long-term goals, intermediate objectives, means of implementation, measures of progress, specific services to be provided, delivering agencies, and timelines, various aspects of the treatment process can be monitored which relate to the components of the plans. The program goals and objectives can indicate the appropriateness of the program to the client. The strategies show whether or not treatment personnel are fulfilling their obligations. Outcome measures are a means of determining the effectiveness of treatment. Once the consumer and his advocate are aware of these things, they can assess whether or not a change is needed in the service situation; if so, advocacy can be initiated in order to make the needed changes.

In Summary, Why are IPPs Important to Consumers?

Individualized program planning has obvious and important implications for assuring the quality and appropriateness of services. It is a means by which programs can be made to fit the needs of individuals rather than vice versa which has traditionally been the case. In addition to planning for this to happen, evaluation mechanisms are included as part of the process to assure that it does happen. Finally, the channels of communication established between service providers and consumers during the planning process may be of significant benefit to all parties concerned. Understanding of and respect for the problems and perspectives of each other can insure that needs are identified and solutions to problems are sought using cooperative techniques.

The use of individualized program plans can be of significant importance to disabled consumers and their advocates in evaluating an individual's services. The groundwork has been laid in federal legislation for meeting the needs of disabled persons in an appropriate

and effective manner. Individualized planning can work to the advantage of service clients when they understand the process and assert their right to be meaningfully involved in it.

FOR FURTHER INFORMATION ON INDIVIDUALIZED PROGRAM PLANNING, SEE:

McNair, D., Smith, B., & Crosson, A. **Seeing the I.E.P. Through the Eyes of a Parent.**

Exceptional Family Advocacy Center
Center on Human Development
University of Oregon
1590 Willamette Street
Eugene, Oregon 97401

This booklet is written primarily for parents of handicapped students. It covers such topics as what has to be in an IEP; what parents should do to prepare for the IEP meeting; ways in which they should participate in the IEP meeting; what they can do in case of disagreement with the school; and what they should do to monitor the implementation of an approved IEP. In addition, examples of IEP components are presented.

Moss, K. **Individual Habilitation Plans in the Developmental Disabilities Program: A Resource Package.**

Social Planning Services
10 Mt. Auburn Street, Room 11
Watertown, Massachusetts 02172

This comprehensive package includes several documents on various components of individualized planning under the developmental disabilities legislation. They are: (1) an introduction and overview of individualized habilitation plans (IHPs); (2) IHP contents and procedural requirements; (3) procedures for IHP assessment, goal setting, implementation and evaluation; (4) specification of roles and responsibilities; (5) IHP record keeping and examples of formats; (6) procedures for IHP monitoring; and (7) recommended policies for protecting the confidentiality of records.

The Parent/Professional Partnership: Classroom Programming: What Should Be Taught?

National Association for Retarded Citizens
NARC Research and Demonstration Institute
2709 Avenue E East
Arlington, Texas 76011

Presents in-depth information on educational programming, especially as it relates to severely and profoundly retarded children. Contents include discussions of legal requirements and adapting school services to the needs of retarded students; issues involved in daily classroom programming; and special considerations in educational programming for those in residential settings.

Parham, J. D. **Individual Program Planning With the Developmentally Disabled.**

Research and Training Center in Mental Retardation
Texas Tech University
P.O. Box 4510
Lubbock, Texas 79409

This training package discusses in detail how to develop an individualized program plan (IPP). It describes the IPP basic components, i.e., goals, objectives, strategies, and evaluation, and includes exercises with which to practice their development. Appended is information

on IPPs derived from litigation, legislation, and accrediting facilities, and examples of forms. This handbook is accompanied by a videotape.

The Foundation for Exceptional Children
1920 Association Drive
Reston, Virginia 22091

Torres, S. **A Primer on Individualized Education Programs for Handicapped Children.**

Presents a series of articles on various aspects of the individualized education program (IEP). Contents include: (1) understanding the IEP; (2) present level(s) of performance and assessment: basic considerations; (3) goals and objectives; (4) arranging specific educational services to be provided; (5) evaluating IEPs; (6) the IEP meeting; (7) the teacher's role in development; (8) the instructional plan; (9) parent participation; and (10) developing an administrative process.

Nondiscrimination

A civil rights law for handicapped persons was enacted in 1973. This law, **Section 504** of the Rehabilitation Act of 1973 (Public Law 93-112, as amended), states:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, or under any program or activity conducted by any executive agency or by the United States Postal Service.

This nondiscrimination mandate is clear; it is intended to assure full rights of citizenship to all handicapped individuals and requires that they be included in the mainstream of society. It also commits the federal government to using its authority to prevent discriminatory practices.

Who is Protected from Discrimination?

Section 504 applies to any individual who:

1. has a physical or mental impairment which substantially limits one or more of such person's major life activities;
2. has a record of such an impairment; or
3. is regarded as having such an impairment.

It is important to understand that, although Section 504 is part of the Rehabilitation Act of 1973, as amended, and although much of this Act is directed toward handicapped persons who are able to achieve employment, the nondiscrimination mandate applies to **all** handicapped individuals.

> But where do we want the nation to be headed? . . . Beyond immediate human needs, citizens want justice, equal opportunity, respect, and a sense of dignity as individuals.
>
> *John W. Gardner* (14)

How is a Handicapped Person's Eligibility for a Program Determined?

The key word for determining eligibility under Section 504 is "qualified." A "qualified" handicapped person is one who meets the essential eligibility requirements for a position or service. For example,

1. in terms of employment, a qualified handicapped person is one who can perform the essential functions of the job in question with reasonable accommodation;
2. in terms of public educational services, one is qualified if he meets the age criteria for services; and
3. in terms of post-secondary and vocational education services, one is qualified if he meets the academic and technical standards for admission and/or participation in the program.

Who is Prevented from Discriminating?

All recipients of federal funds, as well as the United States government and Post Office, are obligated to comply with Section 504. These

[504] attacks the discrimination, the demeaning practices and the injustices that have afflicted the nation's handicapped citizens. It reflects the recognition of the Congress that most handicapped persons can lead proud and productive lives, despite their disabilities. It will usher in a new era of equality of handicapped individuals in which unfair barriers to self-sufficiency and decent treatment will begin to fall before the force of the law.

Joseph A. Califano, Jr. (15)

include state and local governments, school districts, any private service agency which is funded by a state or local government, universities, and any other organization that receives money from the federal government. Any program funded, in whole or in part, by federal monies falls within the parameters of Section 504.

When one considers the scope of federal involvement in social services, the importance of this anti-discrimination mandate becomes apparent. Under the Department of Health, Education, and Welfare (DHEW) alone, the following areas are covered:

1. Employment practices (in DHEW funded programs);
2. Physical accessibility to programs;
3. Preschool, elementary, and secondary education;
4. Post-secondary education; and
5. Health, welfare, and social services.

Section 504 applies to other federal department programs as well, including housing, transportation, and labor. Recipients of federal monies for any of these activities are prevented from discriminating against handicapped persons.

What is Involved in Nondiscrimination Under Section 504?

Recipients of federal funds may not limit a qualified handicapped person in benefitting from any right, privilege, advantage, or opportunity enjoyed by others receiving an aid or services. In complying with this requirement, it is not enough for recipients simply to cease discriminating. Rather, they are obligated to make **reasonable accommodations** that take into consideration the handicapping condition. That is, it is frequently necessary to provide different or special treatment to handicapped persons in order to ensure equal opportunity. For example, it makes no sense to "admit" a deaf person into a vocational training class if he cannot hear the instruction being given.

What are Some Examples of Reasonable Accommodation?

In the area of employment, employers must make reasonable accommodation to the handicaps of applicants and employees unless the accommodation would cause the employer undue hardship. Accommodation may mean changes relating to physical accessibility, job restructuring, modified work schedules, modification of equipment, provision of readers or interpreters, etc.

Providers of services must make their programs, when viewed in their entirety, accessible when operated in existing facilities. They must furthermore assure that newly constructed facilities be accessible. Service accessibility may be accomplished by redesign of equipment, reassignment of classes or services to accessible buildings, assignment of aides, home visits, or alteration of existing facilities. Related or auxiliary services needed in order for a handicapped individual to benefit from a program must be provided.

How do Affirmative Action Requirements Relate to Section 504?

Affirmative action is one means of assuring that the intent of civil rights laws is truly enforced at the individual level. In the present context, affirmative action, in general, means an intentional, planned, active effort by employers to provide equal employment opportunities for handicapped individuals. It is a means of putting "teeth" into the nondiscrimination mandate.

Does the Law Require Affirmative Action Programs?

Yes. An affirmative action commitment is required in all the major pieces of legislation relating to the handicapped. The Rehabilitation Act of 1973, as amended, establishes extensive requirements for affirmative action. Section 501 of the Act stipulates that all components of the executive branch of the federal government have an affirmative action program to hire and advance in employment handicapped persons. Affirmative action is likewise required of federal contractors by Section 503. This applies to anyone who has a government contract or subcontract for $2,500 or more. Thus, any employer who has an agreement with any department or agency of the federal government for the furnishing of supplies or services such as utility, construction, research, or transportation, or who uses government property is covered by Section 503.

In addition, other legislation includes requirements for affirmative action. The Developmentally Disabled Assistance and Bill of Rights Act stipulates that every program receiving its funding must maintain an affirmative action program which conforms to that required in the rehabilitation legislation. The Education for All Handicapped Children Act mandates that each of its recipients make positive efforts to employ and advance in employment qualified handicapped individuals.

Are There Any Penalties for Those Who Do Not Comply With Sections 503 and 504?

Yes. If a program receiving federal funds is found to be in noncompliance with Section 504, the federal government may terminate or suspend its financial assistance. It may furthermore refer the case to the Department of Justice with a recommendation to bring charges against the noncomplying recipient. If a federal contractor is found to be in noncompliance with Section 503, the federal government may withhold payment on the contract, the contract may be terminated, and/or the contractor may be prohibited from receiving any further contracts.

What Can Individuals Do If They Believe They have Been Discriminated Against?

Handicapped individuals have the right to seek various kinds of relief for discriminatory treatment under Sections 501, 503, and 504. They may pursue such remedies as admission, compensation, promotion, reinstatement, back pay, and the like.

Under Section 501, which relates to employment within the executive branch of the federal government, individuals have at their disposal all the remedies, procedures, and rights that others have under the Civil Rights Act of 1964. These include administrative procedures as well as the right to sue the government in court. The court may, under this Section, take into account "the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefore or other appropriate relief in order to achieve an equitable and appropriate remedy."

Handicapped individuals experiencing discrimination by federal contractors may, under Section 503, file a complaint with the Department of Labor. The Department is required to investigate promptly the complaint and may impose remedies.

In addition, the remedies, procedures, and rights provided by the Civil Rights Act of 1964 are also available to handicapped persons under Section 504. These include the right to sue in court as well as to use administrative procedures.

In all these instances, courts are allowed to award attorneys' fees to successful plaintiffs. In practical terms, this means that handicapped persons may find it easier to hire an attorney to represent them.

In Summary, Why is Nondiscrimination Important to Consumers?

Section 504, the first federal civil rights mandate covering handicapped individuals, offers significant protection against second class citizenship. It requires that disabled persons be treated equally in all programs and activities funded by the federal government. This provision is an important tool for helping handicapped people to take their place in society with all the human and civil rights to which every citizen is entitled.

FOR FURTHER INFORMATION ON NONDISCRIMINATION, SEE:

Affirmative Action: Resource Manual for Vocational Rehabilitation.

Research and Training Center
West Virginia University
509 Allen Hall
Morgantown, West Virginia 26506

Provides practical information on the nondiscrimination sections of the rehabilitation legislation and pointers to help vocational rehabilitation workers implement these provisions. Contents include an overview of affirmative action and of Sections 501, 503, and 504 of the legislation, as well as discussions of the vocational rehabilitation roles of employer, consultant, and advocate. Appended are copies of the regulations on these sections.

No Discrimination/No Barrier in Education, Employment, and Service Programs (Summary of Section 504, Rehabilitation Act of 1973—P.L. 93-112).

Parent Information Center
Co-ordinating Council for
Handicapped Children
407 S. Dearborn Street, Room 1075
Chicago, Illinois 60605

This simply written document summarizes the major provisions regarding Section 504. It covers history of the provision; definitions;

the relationship between Section 504 and Public Law 94-142 including major requirements in education; implications of Section 504 for post-secondary education including major requirements and prohibitions; and implications for employment including prohibitions and employer requirements.

The Rehabilitation Act: An Analysis of the Section 504 Regulation and Its Implications for State and Local Education Agencies.

National Association of State Directors of Special Education
1201 16th Street, N.W.
Suite 610E
Washington, D.C. 20036

In an easy to read, side-by-side format, various provisions of the Section 504 regulations are presented along with their implications for education. The major topics discussed are general provisions; employment practices; program accessibility; preschool, elementary, and secondary education; post-secondary education; and health, welfare, and social services.

Section 504 of the Rehabilitation Act of 1973: Fact Sheet. July 1977.

U.S. Department of Health, Education, and Welfare
Office of the Secretary
Office for Civil Rights
Washington, D.C. 20201

Overviews the rights of handicapped persons under Section 504. Areas covered are: program accessibility; preschool, elementary, secondary, and adult education; post-secondary education; health, welfare, and social services; general employment provisions; drug and alcohol addiction; important dates for Section 504 compliance; and how to file a discrimination complaint.

Special Report: Section 504 and the New Civil Rights Mandates. **Amicus**, September 1977.

National Center for Law and the Handicapped
1235 North Eddy Street
South Bend, Indiana 46617

Contains a series of articles on Section 504. Included are: Nondiscrimination Provisions of the HEW Section 504 Regulations; Who is "Handicapped?"; Legislative History of Section 504; Observations on Section 504 Regulations of the National Center for Law and the Handicapped; Sections 503 and 504: New Employment Rights for Individuals with Handicaps; Complaint Procedures Under Sections 503 and 504; and Deadlines for Section 504 Compliance.

Least Restrictive Alternative

Persons with disabilities should have the opportunity to interact with people who are not handicapped. They should be able to do the things the nonhandicapped do to the greatest possible extent. These situations are addressed by the principle of least restrictive alternative which is discussed in federal legislation. Implementation of the principle of least restrictive alternative guarantees that disabled individuals can live as normal a life as possible.

Our society has an obligation to provide the handicapped with the means to enjoy their basic civil rights: the right to vote, the right to gainful employment, the right to equal educational opportunities, and freedom of movement.

William O. Douglas (16)

Is Least Restrictive Alternative a Right?

Yes. The intent of the developmental disabilities legislation clearly demonstrates that disabled people have a right to receive services in the least restrictive alternative. As it deliberated on this legislation, Congress was very concerned about the conditions under which many disabled persons are forced to live and about the widespread denial of their rights. As a partial remedy to this situation, developmental disabilities legislation includes a section detailing basic rights of this population. It is intended to offer protection to disabled individuals who require institutional care or need community facilities and programs. It is further intended to facilitate their habilitation.

In its discussion of rights, the Developmentally Disabled Assistance and Bill of Rights Act recognizes the right of developmentally disabled persons to the least restrictive alternative. In Title II, Section 111 entitled "Rights of the Developmentally Disabled," it is stated that such persons have a right to appropriate treatment, services, and habilitation and that:

> The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is **least restrictive of the person's personal liberty.** (bold added)

What Does Least Restrictive Alternative Mean?

In general terms, least restrictive alternative means that persons in need of services must be treated in the way that is least restrictive of their personal liberty. The government cannot try to achieve its purposes in any manner that takes away more individual freedom than is absolutely necessary. At a minimum, the service agency must prove that its purpose is legitimate (for example, educating all its children), and it must explore on an individual basis all the alternatives that would accomplish the agency's purpose and choose the least restrictive of these. Some of the specific situations to which the principle of least restrictive alternative applies are discussed next.

Does the Right to Least Restrictive Alternative Apply to Educational Settings?

Yes. As in the developmental disabilities legislation, the intent of the Education for All Handicapped Children Act clearly includes a recog-

nition of the right to the least restrictive alternative. Public Law 94-142 is designed to assure that all students who have handicaps receive an appropriate education. The need for this legislation is based upon the recognition that (1) one million handicapped children are excluded from public schools and will not experience the educational process with their peers; and (2) more than half the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity. Thus, the Act is intended to guarantee that handicapped children are provided the same educational advantages as are provided to the non-handicapped, and the least restrictive educational placement is part of this guarantee.

What Does the Law Say the Schools Must Do?

Public Law 94-142 explicitly gives schools the responsibility to provide the least restrictive alternative to its handicapped students. State and local or intermediate educational units' eligibility for funds under the Act is tied, in part, to the stipulation that it has established:

> procedures to assure that, to the maximum extent appropriate, handicapped children . . . are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In addition, the U.S. Commissioner of Education is charged with the responsibility for evaluating programs being implemented under Public Law 94-142 and reporting to Congress about them. Included in his report must be a statement regarding the number of handicapped children who are in regular educational programs and the effectiveness of state, local, and intermediate educational agencies' efforts to assure that:

> handicapped children receive special education and related services in the **least restrictive environment** commensurate with their needs. (bold added)

Does This Mean That Every Handicapped Student Must be Placed in a Regular Classroom?

No. The least restrictive environment in the educational setting is not interpreted to mean that every handicapped child must be placed in a regular classroom. Unique needs of each individual must be considered in determining his optimal placement. In some cases, it will be found that a regular classroom best meets the needs of a particular student; in others, a more segregated setting will seem most appropriate. It is expected that integrated placements will be the rule and more resrictive environments the exception.

> Mainstreaming is upon us; the time for debate is already past. As an expression of society's concern for liberty and the protection of human rights, mainstreaming has captured the imagination of regular and special educators alike. In practice it offers mildly retarded children educational opportunities unfettered by labels, segregation or neglect. The obstructionists play out their role, and the inevitable critics of change bemoan the passing of the special class era. The wanton detractors of mainstreaming will continue to carp, but the movement will not be denied.
>
> *Gail L. Ensher* (17)

Does Least Restrictive Alternative Mean That Developmentally Disabled People Should Not be Placed in Institutions?

In most cases, yes. As in educational placements, appropriate residential services must be determined on the basis of every individual's unique needs. For the most part, deinstitutionalization is integral to assuring disabled persons the least restrictive environment. It is widely recognized that large institutions are generally inhumane and non-habilitative. Institutionalization of disabled persons is also generally inappropriate to their maximum development, and most institution residents are inappropriately housed in them. In view of these well-documented assertions, the 1975 Developmentally Disabled Assistance and Bill of Rights Act, as amended, places strong emphasis upon solving the problems of institutionalization.

In order for deinstitutionalization to work, it is recognized that community alternatives must be developed and/or expanded. This requires coordination of services and planning for maximum utilization of community resources. In its efforts to promote deinstitutionalization, the developmental disabilities act is aimed at improving institutional care as an interim measure, minimizing inappropriate admissions, and developing alternative programs of care.

In What Ways Does the Developmental Disabilities Legislation Promote Deinstitutionalization?

Public Law 94-103, as amended, includes state plan requirements aimed at deinstitutionalization. It provides for support of university affiliated facilities and special projects which are intended to change methods and attitudes which historically have led to placement in institutions and to develop a necessary array of community services which will serve as alternatives to institutionalization.

Developmental disabilities legislation currently requires states to choose from among four priority areas on which to concentrate their efforts. One of these areas, **alternative community living arrangement services,** directly addresses deinstitutionalization. It is defined as:

> such services as will assist persons with developmental disabilities in maintaining suitable residential arrangements in the community, and includes in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, and staff training, placement, and maintenance services.

The other three priority areas, case management services, child development services, and nonvocational social-developmental services, speak indirectly to deinstitutionalization. They are directed toward meeting all the service needs and improving the functioning abilities of individuals so they can live in the community.

Under Public Law 94-103, as amended, authority is given for support of university affiliated facilities to operate demonstration projects for providing services to developmentally disabled persons and to provide interdisciplinary professional training. Also authorized is the

establishment of satellite centers to be responsible for services in communities where adequate services are not otherwise available. Thus, the provisions for university affiliated facilities and their satellite centers are intended to substantially supplement community resources and therefore can make a major contribution to the deinstitutionalization movement.

The developmental disabilities legislation furthermore authorizes special project grants for a variety of activities related to community alternatives to institutionalization. They may be awarded for such projects as expanding or improving services (particularly priority services), dissemination of information, and public awareness and education. They may, therefore, reduce the need for institutional placements.

Public Law 94-103, as amended, thus places strong emphasis upon deinstitutionalization. Its provisions are intended to change situations which in the past have led to commitments to institutions. They also contribute to the least restrictive alternative placements by attempting to assure the availability of a spectrum of community services which may serve as alternatives to institutionalization.

Does Rehabilitation Legislation Support the Principle of Least Restrictive Alternative?

Yes. Rehabilitation legislation speaks to this issue in several ways. First, the four Title V mandates (employment of handicapped individuals within the federal government, the Architectural and Transportation Barriers Compliance Board, employment under federal contracts, and nondiscrimination under federal grants) are all directed toward providing opportunities for handicapped persons to function as normally as possible in the community. Some of these provisions are discussed more fully in the section on Nondiscrimination, pp. 32-36. Second, special programs authorized in the law are meant to provide normalized employment alternatives for handicapped individuals. "Projects With Industry and Business Opportunities for Handicapped Individuals" and "Community Service Employment Pilot Programs for Handicapped Individuals" aim at creating viable, integrated openings for disabled people in the employment sector.

In addition, rehabilitation legislation authorizes funding for comprehensive services for independent living and centers for independent living. The purpose of these services is to "enhance the ability of a handicapped individual to live independently and function within his family and community and, if appropriate, secure and maintain appropriate employment." State plans for using independent living services monies must assure that the state will provide **meaningful alternatives to institutionalization.**

In Summary, Why is Legislation Supporting Least Restrictive Alternative Important to Consumers?

Recent legislation relating to the disabled population is clearly supportive of the principle of least restrictive alternative. Disabled indi-

viduals must be treated in as normal a manner as possible. A least restrictive alternative is mandatory in educational placement, in some rehabilitation services, and in the full spectrum of services offered to the developmentally disabled. Advocates have a powerful tool in this right which can lead to disabled persons living as full and normal a life as their potential allows.

FOR FURTHER INFORMATION ON LEAST RESTRICTIVE ALTERNATIVE, SEE:

Learning Concepts
2501 N. Lamar
Austin, Texas 78705

Parks, A. L., & Rousseau, M. K. **The Public Law Supporting Mainstreaming.**

A cartoon format is used to provide a discussion of issues involved in mainstreaming in education. Major sections cover: (1) an overview of Public Law 94-142; (2) assessment, including due process, evaluation, and records; and (3) serving handicapped children, including personnel, individualization, and private schools.

Syracuse University Press
Syracuse, New York 13210

Paul, J. L., Stedman, D. J., & Neufeld, G. R.)Eds.). **Deinstitutionalization: Program and Policy Development,** 1977.

Contains a number of papers on factors involved in deinstitutionalization and on the effects of institutionalization on individuals. Such topics as stigmatization; political structures; the role of consumerism and advocacy; and the movement toward deinstitutionalization in terms of accountability, legal requirements, program evaluation, and public awareness are discussed.

United States General Accounting Office
Washington, D.C. 20548

Returning the Mentally Disabled to the Community: Government Needs to do More (Report to the Congress by the Comptroller General of the United States). January 7, 1977.

This extensive report analyzes the federal government's deinstitutionalization efforts and makes recommendations for making them more effective. Included are discussions of what has happened to the people; and the impact of such federal programs as community mental health services, Medicaid, Medicare, SSi, social services, rehabilitation, housing, and labor. Recommendations are directed toward Congress and various administrative departments.

National Center for Law and the Handicapped
1235 North Eddy Street
South Bend, Indiana 46617

Special Report: From the Institution—To the Community: The Legal Basis; The Struggle for Change; How Have They Fared? **Amicus,** November 1977..

Presents a series of articles on the deinstitutionalization movement. Contents include: The Least Restrictive Alternative: In Principle and In Application; Deinstitutionalization: A Selected Bibliography; Residential Services; The Pennsylvania Paradox; and Beyond Deinstitutionalization: What's Happening to the People?

Procedural Safeguards in Education

Procedural safeguards, under the Education for All Handicapped Children Act (Public Law 94-142), are methods to assure that every child's rights are respected. They make sure that the educational program a child receives is not harmful to his development or to the interests of his parents. In general, the law says that state and local education agencies must guarantee procedural safeguards in relation to identification, evaluation, educational placement, and provision of a free appropriate public education. In addition, schools must inform parents of their rights.

The handicapped, if given the proper education and equality of treatment in all other respects, can and do become productive, self-supporting and well-adjusted citizens. Their own lives are brighter and all of society benefits from their contributions.

Hubert H. Humphrey (18)

Are Procedural Safeguards Only Available in an Education Setting?

No. Due to court decisions, federal and state laws, and administrative regulations, various procedural safeguards are currently available in many service programs. This is true in most rehabilitation, developmental disabilities, and other agencies serving handicapped individuals. This section focuses upon procedural safeguards in education since they are expressly written into the legislation and illustrate the major types of safeguards that are generally available. In order to identify such protections offered within other service settings, refer to federal regulations, state regulations, or other administrative procedure documents which govern the specific service agency with which you are concerned. Discussed below are some of the procedural safeguards that are available under Public Law 94-142.

Do You Have a Right to Know What the School is Doing With Your Child?

Yes. The school is required by law to notify you whenever it:

1. plans to conduct an evaluation of your child;
2. wants to change your child's educational placement; or
3. refuses to conduct an evaluation or make a change in placement.

What are Your Rights in Evaluation Procedures?

Public Law 94-142 seeks to assure that parents' and children's rights are protected throughout the evaluation process. Since an evaluation must always be conducted prior to any change of a child's placement in an educational program, it must be fair and nondiscriminatory. Schools must follow these rules in their evaluations:

1. The school cannot evaluate your child without your written permission;
2. Testing procedures and materials must be provided and administered in the child's native language or mode of communication (for example, sign language);

3. All evaluation procedures must be valid for the purpose for which they are being used. They must also be administered by a qualified evaluator;
4. Evaluation instruments must be selected and administered in such a way that the results will not be affected by the child's sensory, motor, or language disabilities;
5. No single test may be the sole basis for determining an appropriate educational placement for a child;
6. Other information, such as that concerning the child's physical condition, social-cultural background, and adaptive behavior both at home and school, must be obtained and considered in addition to test results before a decision about educational placement may be made;
7. Interpretation of evaluation information and decisions about the child's placement must be made by a team of qualified persons. In no case may these be the responsibility of a single individual;
8. The school must re-evaluate each child at least every three years, or more frequently if his condition changes or if his parents or teacher requests it; and
9. Unless the evaluation results clearly show that the child's instruction must occur in a special setting, the evaluation may not serve as the reason for removing the child from the regular educational program.

What if You Disagree With the School's Evaluation?

The purpose of these procedures is to assure that every student is evaluated fairly. However, parents or guardians may challenge the school's evaluation if they do not believe that their child has received a fair assessment. Upon their request, they must be provided an independent evaluation by a qualified professional. The independent evaluation must be at public expense unless the school, in a hearing, proves the adequacy of its evaluation information. Regardless of who pays for the independent evaluation, it must be used as evidence in making educational decisions about the child.

Does the School Have to Keep Your Child's Records Confidential?

Yes. State and local education agencies are required under Public Law 94-142 to conform to regulations issued on February 27, 1976 by the Commissioner of Education regarding confidentiality of information. These regulations say that the state education agency must notify parents of the kinds of personally identifiable information that will be collected for special education purposes, how the information will be collected, and the types of children on whom such information will be maintained. It must also make public a summary of the policies which agencies must follow related to how confidential information is to be kept, to whom it may be given, and when and how it is to be

destroyed when no longer needed. It must publicize the rights of parents and children with respect to personally identifiable information.

Local education agencies are required to designate one official to be responsible for:

1. assuring the confidentiality of personally identifiable information;
2. insuring that persons who collect and use such information are knowledgeable about confidentiality law and restrictions; and
3. maintaining an accurate listing of persons who are authorized to have such information.

They must keep records of all persons, other than authorized employees of the school district and parents, who have had access to such information and the purpose for which they were given access. Parents must be given a list of the types of information maintained on their children and the locations in which records are kept.

Do Parents Have the Right to See Their Child's Records?

Yes. All education agencies must permit parents to inspect and review any personally identifiable information pertaining to their children. Parental requests must be complied with without undue delay, and in any case information must be made available to parents prior to conducting any hearing regarding a child. Parental consent must be obtained before confidential information may be used for any purpose other than that of providing the child's educational program.

What Can You Do if You Disagree With Information in Your Child's Records?

Parents have the right to contest information kept in their child's records. If they judge that information is inaccurate, misleading, or violates the privacy or rights of the child, they may request that the information be removed or changed. Should the education agency decide against amending the record, it must inform the parent of its refusal and of the parent's right to a hearing to challenge the record. If the hearing officer rules in favor of the parents, the school must amend the record and inform the parent in writing of the changes. If the ruling favors the school, the school must still allow the parents to insert a statement in the record indicating the information with which they disagree and their reasons.

What are Your Due Process Rights?

Parents of handicapped children are guaranteed due process mechanisms under Public Law 94-142 which are designed to protect their rights and those of their child. In case of disagreement between parents and school personnel about any matter concerning a child's

identification, evaluation, or educational placement, both parents and the school are entitled to request an impartial due process hearing.

What Reasons Might You Have for Initiating a Due Process Hearing?

You have the right to a due process hearing in any of the following situations:

1. When the school refuses your request to evaluate or re-evaluate your child;
2. When the school refuses your request to pay for an independent evaluation;
3. When the school refuses your request to see all of your child's records;
4. When the school refuses your request to remove or change information in your child's records with which you disagree;
5. When you and the school cannot reach agreement on your child's individualized education program (IEP); and
6. When an approved IEP is not being fully implemented.

What are Your Rights in the Hearing Procedures?

The due process hearing must be conducted by the state or local education agency at public expense. The hearing must be conducted by an impartial hearing officer who is not employed by the school district for any purpose other than to serve as a hearing officer. Each party must be accorded the right to be represented in the hearing by a lawyer or by other individuals with special knowledge or training regarding the education of handicapped children. Each party may present evidence, cross-examine witnesses, and compel the attendance of witnesses. A verbatim record of the hearing must be made available to parents, and each party must be given a written report of the findings of fact and decisions. The agency which has received a request for a hearing must have completed the hearing within 45 days of the complaint. It is further required to conduct the hearing at a time and place which are reasonably convenient to the parents and child.

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown v. Board of Education (19)

What Can You Do If You Disagree With the Hearing's Results?

If either the parent or the school disagrees with the results of the hearing, he may initiate an administrative appeal and review by the state education agency. If the result of this is still unsatisfactory, a civil action may be filed in court.

What Happens to Your Child Throughout the Hearing Procedures?

Throughout the course of these proceedings, the child in question must be maintained in his present education program. This applies until the disagreement has been resolved or until a final decision is

rendered through hearing, appeal, or civil action. In case the child is not in an education program, he must, with the consent of the parents, be admitted to a public school program until the due process procedures are exhausted. If a child's parents are not known, unavailable, or the child is a ward of the state, the state education agency is required to assign a qualified person to serve as a surrogate for the parents in order to assure that the child's rights are protected.

In Summary, What is the Significance of Procedural Safeguards to Consumers?

The procedural safeguards guaranteed under Public Law 94-142 are a significant means of assuring that legislated rights are actually implemented. They furthermore allow parents to have meaningful input into educational decision making. No longer are they at the mercy of arbitrary dictates of school officials; rather, they have both the right and the responsibility to participate in their child's education. Procedural safeguards provide an opportunity to assure the provision of a free appropriate public education for every handicapped child.

FOR FURTHER INFORMATION ON PROCEDURAL SAFEGUARDS, SEE:

Abeson, A., Bolick, N., & Hass, J. **A Primer on Due Process,** 1975.

Council for Exceptional Children
1920 Association Drive
Reston, Virginia 22091

Discusses various aspects of due process as they relate to the identification, evaluation, and placement of handicapped children. Included are sections on background information; specific requirements such as prior notice, opportunity to respond to prior notice, hearings, and appeals; the hearing officer; and surrogate parents.

Rhodes, W. C., & Sweeney, D. P. (Eds.). **Alternatives to Litigation: The Necessity for Parent Consultation,** May 1977.

Institute for the Study on Mental Retardation and Related Disabilities
The University of Michigan
Ann Arbor, Michigan 48109

Presents proceedings of two institutes attended by educators. Chapters include: (1) Litigation and Psycho-Educational Services; (2) Procedural Problems in Conducting an Educational Planning and Placement Committee Meeting and a Special Education Hearing from an Advocate's Perspective; (3) Parent Involvement in Diagnostic Testing; (4) Parent Consultation: A Healing Process; and (5) Legal Issues Faced by School Psychologists Regarding Handicapped Children.

Due Process and the Exceptional Child: A Guide for Parents, January 1976.

Education Law Center
2100 Lewis Tower Building
225 South 15th Street
Philadelphia, Pennsylvania 19102

Although the due process procedures discussed in this booklet relate to Pennsylvania law, the pointers given are applicable to general issues in the education of all handicapped children. The topics covered

include what to expect of a parent conference, questions to ask, how to initiate a request, and a list of parents' rights; and what to expect of a hearing, how to initiate a request for a hearing, and a list of parents' rights related to the hearing. Also presented is a list of unlawful excuses frequently given for denying an education to a handicapped child.

Research Institute for Educational Problems
29 Ware Street
Cambridge, Massachusetts 02138

Kotin, L., & Eager, N. B. **Due Process in Special Education: A Legal Analysis,** February 1977.

Relates the due process clause of the Fourteenth Amendment to special education decision making. Narrative topics covered are Due Process in Special Education: Legal Perspectives, and The State of the States, P.L. 94-142 and Systems Design. Also included are extensive charts showing due process provisions in all states' special education statutes, and in states' administrative provisions.

Exceptional Family Advocacy Center
Center on Human Development
University of Oregon
1590 Willamette Street
Eugene, Oregon 97401

McNair, D., Smith, B., & Crosson, A. **Procedural Safeguards: What, Why, and When?**

This booklet is written for parents of handicapped students. It discusses the various procedural safeguards guaranteed by Public Law 94-142 including those related to prior notice, evaluations, records, individualized education programs (IEPs) and impartial due process hearings. Situations which might be causes for challenging a school's actions are presented, as is a listing of rights regarding the hearing procedures.

Case Studies

This final section consists of a series of case studies. The cases demonstrate the interpretation of federal legislation and the application of consumer protection mechanisms in terms of real-life problem situations. Problems which are frequently faced by disabled individuals are illustrated in story form, and remedies for the problems are suggested in terms of legislated consumer protection mechanisms. Each case study has three parts: (1) a statement of the problem situation; (2) legal issues raised by the problem situation; and (3) discussion of these issues.

The problem statements vary across age groups and service settings. The legal issues covered include all the consumer protection mechanisms discussed previously, i.e., individualized program planning, nondiscrimination, least restrictive alternative, and procedural safeguards in education. The discussion indicates how the rights of handicapped persons, based in federal legislation, may be applied in order to find a solution to the problem being examined.

Readers thus may practice using some of the tools at their disposal for advancing the citizenship of people with disabilities. It is hoped that this will lead to an increased ability to apply these rights and mechanisms to their own particular situations and assist them in being effective advocates.

The case studies are included for illustration. Many of the specific regulations have not yet been subjected to judicial interpretation. Although it is the hope of the authors that the studies will be helpful to the general understanding of the reader, they are not intended, nor should they be relied upon, as a substitute for competent legal advice in specific situations.

The first tentative steps toward equality for disabled people are being taken in education, rehabilitation, employment, housing, transportation, and civil rights. We are beginning to appreciate the fact that there exists in this country a vast resource of virtually untapped energy and creativity, vision and productivity, potential and power. We are beginning to see that it is within our capacity to use these resources, slowly, perhaps but surely and steadily. We are beginning to understand that America handicaps disabled people. And we are beginning to realize that by freeing abilities from the shackles of disabilities, we are rehabilitating not only disabled people but America itself.

Frank Bowe (20)

CASE STUDY NUMBER 1

Problem Situation

Burton Contractors, Inc. entered into a contract with the United States Coast Guard to build a small runway to be used as a base for Air-Sea rescue operations in the northwest. The total contract price for the project was slightly in excess of two million dollars. Burton planned to use its own engineers and architects on the project, but to hire local workers to perform the manual labor. Because of the high unemployment rate in the area, more than 500 people applied for the 35 jobs which Burton had available.

Mark Bradley, a twenty-three year old mildly retarded individual, was one of those 500 persons who applied. Mark, who had previous experience as a surveyor's helper on various road building projects, interviewed for a similar job with Burton. Based upon Mark's past experience, the interviewer determined that Mark had the ability to perform the essential functions of the job; however, because of his handicap, he was afraid that Mark might not "fit in" and might be harassed by other employees on the project. Mark was not hired; the job was given instead to a person with normal intelligence who had experience roughly equivalent to Mark's.

Issues

1. Did Burton Contractors act appropriately in refusing to hire Mark for the job as a surveyor's helper?
2. Was it proper for the interviewer to consider possible harassment by other employees in his hiring decision? Does Burton have any affirmative duty to try to prevent such harassment?

Discussion

This case illustrates the additional requirements beyond nondiscrimination that are imposed upon certain employers by the Rehabilitation Act. Section 503 of that Act provides:

> Any contract in excess of $2,500 entered into by any Federal department or agency for procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals.

The regulations promulgated to implement Section 503 require a contractor to "take positive steps to attract qualified handicapped persons . . . who have requisite skills and can be recruited through affirmative action measures."

It is clear that such steps were not taken in this case. Mark was qualified to do the job and should have received employment on that basis under Section 503 (even to the detriment of the similarly qualified applicant of normal intelligence). It was also improper for the employer to consider possible harassment or intimidation of Mark by other employees. The regulations provide that the employer is "obligated to prevent harassment of employees placed through affirmative action efforts," and may solicit the aid of the contracting governmental agency in doing so.

CASE STUDY NUMBER 2

Procedural Safeguards in Education
Nondiscrimination

Problem Situation

Eduardo Martinez moved to Fernwood, USA, from Vera Cruz, Mexico, at the age of seven. Although his primary language was Spanish, Eduardo was able to communicate to a limited extent in English. His mother enrolled him in a local elementary school. Upon enrollment, the school used an English version of both a standardized intelligence test and a standardized achievement test in order to determine an appropriate placement for Eduardo.

Based upon Eduardo's performance on both of these tests, school officials recommended that he be placed in their educable mentally retarded classroom. This recommendation was perplexing to Eduardo's parents because they had always believed that their child was of at least average intelligence; however, they recognized that their frequent moves in the past may have hampered Eduardo's educational progress.

Mrs. Martinez approached school officials and inquired about the possibility that the test results may have been biased because they had been given in English rather than Spanish. She was also concerned because Eduardo was tested at a point in time when he might not have been psychologically adjusted to the move from Vera Cruz to Fernwood. The school officials were polite but inflexible. They ex-

plained that it would serve no purpose to give Eduardo the tests in Spanish because they had no bilingual teachers; all of his instruction would necessarily be in English. They advised her that she had the right to have Eduardo evaluated by an independent psychologist, at her own expense, since the school had no money budgeted for private evaluations. After talking it over, the parents decided to accept the judgment and recommendation of the school officials.

Issues

1. Was it appropriate that Eduardo be tested in English to determine his educational placement?
2. Was it appropriate for school officials to advise Mrs. Martinez that she must bear the financial burden of any further evaluation for Eduardo? What is the significance of the school's position that they don't have enough money for private evaluations?
3. Under the relevant federal legislation, does Mrs. Martinez have any further avenues of appeal? Must the school take responsibility for explaining those avenues to Mrs. Martinez?

Discussion

Under both Public Law 94-142 and Section 504 of the Rehabilitation Act, the school acted improperly in not administering evaluations to Eduardo in his native language. This is an example of mislabeling a child because of a failure to take into account his ethnic and cultural background. It is precisely this problem (one that has been commonly ignored) that specific portions of these laws are designed to eliminate. If Eduardo is truly mislabeled and not handicapped, then he technically does not fall within the parameters of the legislation for handicapped children; however, it is a goal of such legislation to prevent this type of mistake.

The school's lack of bilingual teachers and its inability to pay for private evaluations are irrelevant to the mandates imposed by the federal government. To continue to receive federal funds, school districts must comply with the federal requirements which include assuring the rights to nondiscriminatory assessment, independent evaluations, and provision of an appropriate education. Lack of financial resources is not an excuse for noncompliance.

The procedural safeguards required by Public Law 94-142 are available to Eduardo's parents to challenge the school's decisions in this matter. They have a right to an administrative hearing before an impartial hearings officer in order to resolve the problem; the school district has a responsibility to advise them of this right.

Least Restrictive Alternative

CASE STUDY NUMBER 3

Problem Situation

North Woods, a 200-bed private nursing home for the mentally retarded in a rural area of the States of Haynes, is operated by a private profit-making corporation under a service management contract with the state. The facility is one of three of its type in the state and, like the other two facilities, has become increasingly crowded as a result of a burgeoning admissions rate on both a voluntary and involuntary basis.

As a result of overcrowded conditions at all of its private nursing facilities for the mentally retarded, the state legislature of Haynes recently appropriated monies for the purpose of constructing a new and larger facility in another rural area of the state. It is contemplated that the new facility would completely replace North Woods and do much to alleviate the overcrowded conditions at the other two facilities.

Programs for residents of the new facility would be similar to those presently available at North Woods. There would be some academic instruction and vocational education available, but at least 80 percent of the appropriated budget would be required for maintenance of the physical plant and the day-to-day operation of the facility.

Issues

1. Is the construction of the new facility an appropriate means for the State of Haynes to alleviate the problems of overcrowding nursing facilities?
2. Does the Haynes legislature run afoul of any federal legislation in its decision to construct the new facility?

Discussion

The decision by the Haynes legislature to handle overcrowding by the construction of a new and larger facility in another rural area of the state is certainly an inappropriate solution to their problem. Nursing homes can be useful as way stations in the integration process of mentally retarded persons into the community; however, to take persons from such a facility and place them into a large institution is to move in the wrong direction.

The expressed and implied intent of the developmental disabilities legislation is to move away from the use of large institutions located in isolated areas toward community-based placements and programming. Specifically, the premise contained in this legislation that the least restrictive alternative must be used in the habilitation process of handicapped individuals, appears to be violated. Public Law 94-103, as amended, Section 111 provides:

(1) Persons with developmental disabilities have a right to

appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and **should be provided in the setting that is least restrictive of the person's personal liberty.** (emphasis added)

The Act thus expressly recognizes the inappropriateness of placements in large institutional settings and articulates deinstitutionalization as a desired goal. The support of community programs as alternatives to institutionalization is encouraged.

It would be a mistake for the rest of America to think that the benefits are only going to the handicapped, because when you get freedom, we share that freedom, and when the handicapped get the benefits of education and a job and a purposeful life, we all share in the benefits of that education, that job, and a purposeful life.

President Jimmy Carter (21)

CASE STUDY NUMBER 4

Nondiscrimination

Problem Situation

John Swenson, who is thirty years old, has a history of epilepsy which consists of four episodes of grand mal seizures when he was 12 and several petit mal seizures the following year. There is no evidence of any seizures of either variety since that time, and his medication was discontinued when he was eighteen years old.

John applied for a job as a custodian at the Parkdale State Psychiatric Hospital which receives in excess of $50,000 in various contracts with the federal government. As part of the application process, John was administered an oral and written examination to determine if he was qualified to perform the essential functions of the job. Upon successfully passing this examination, he was asked for a complete medical history. A few days later, John was informed that his past history of epilepsy automatically excluded him from employment at the hospital.

Issues

1. Has Parkdale Psychiatric State Hospital discriminated against John in its hiring practices?

2. Does the Rehabilitation Act of 1973 prohibit this type of discrimination?

Discussion

John has been improperly discriminated against by the Hospital under both Sections 504 and 503 of the Rehabilitation Act of 1973 as amended.

Section 504 of that Act provides:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, or under any program or activity conducted by any executive agency or by the United States Postal Service.

For purposes of Section 504, a handicapped individual is defined as:

> Any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) **has a record of such impairment,** or (c) is regarded as having such impairment. (emphasis added)

John clearly fits within the definition of handicap in category (b). The Hospital determined John's ability and qualifications through a battery of tests and refused to hire him only when he presented his history of epilepsy. Thus, John, who is "otherwise qualified," was improperly denied employment based upon Parkdale's presumption of unfitness.

In addition to the prohibition on discrimination, Section 503 of the Act also applies in this case since Parkdale receives more than $2,500 from the federal government. Section 503 provides:

> Any contract in excess of $2,500 entered into by any Federal department or agency for procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals.

Parkdale is required to go **beyond** nondiscrimination and take affirmative action to employ and advance qualified handicapped individuals.

CASE STUDY NUMBER 5

Individualized Program Planning
Least Restrictive Alternative
Nondiscrimination

Part I

Problem Situation

Mark Phillips, a twenty-eight year old mentally retarded man, was placed in a group home following the death of his mother in 1976. The home is federally subsidized under the developmental disabilities act as a pilot project in the provision of community-based services. It is located in a small city of approximately 30,000 persons.

The group home staff decided that there was no need to do an individual needs assessment and program plan for Mark. They had previously handled cases similar to his and believed that he could adapt to, and benefit from, the basic self-care instruction that they offered to all of their residents. After participating in the program for two years, Mark's self-care skills had increased to the point where the staff believed he was ready to participate in a vocational rehabilitation program. Application was made to the local vocational rehabilitation office for him to receive their services.

Once eligibility was established, Mark's rehabilitation counselor met with one of the group home staff members and discussed with her what he thought would be a suitable work program. The counselor indicated that the only program in the area that had any openings at that time which might suit Mark was a sheltered workshop that packaged and labeled merchandise on a subcontract basis for a local shipping company. They agreed that employment at the workshop was probably the best placement available to Mark, and that he might benefit substantially from it. Shortly thereafter, Mark was placed in the workshop and was paid minimum wage to perform a packaging task.

Issues

1. Should the group home have developed an individualized habilitation plan for Mark? If so, how should it have developed such a plan, and what should the plan have contained?
2. Did the vocational rehabilitation counselor have a responsibility to prepare a written plan for Mark? What should such a plan contain?
3. If the group home had already prepared a written plan for Mark, would this relieve the vocational rehabilitation counselor of the responsibility for preparing such a plan?

Discussion

Public Law 94-103, as amended, requires any facility which receives funding under the Act to prepare in writing an individualized habilitation plan (IHP) for each developmentally disabled person who receives services from that facility. The group home is certainly such a facility, and it failed to comply with the Act in not preparing a plan.

The IHP must be prepared jointly by the service personnel, the client, and his parents or guardians when appropriate. It must contain statements regarding:

1. long-term goals;
2. intermediate objectives;
3. means of implementation;
4. measures of progress;
5. specific services to be provided;
6. the agencies which will deliver the services;
7. the service providers; and
8. timelines.

Each IHP must be reviewed at least annually under the Act by the facility responsible for the provision of services. The group home would be responsible for such review in this case. The client and parents or guardians, if any, must be given an opportunity to participate in this review.

In addition, the vocational rehabilitation counselor has a responsibility to develop an individualized written rehabilitation program (IWRP) under the Rehabilitation Act of 1973, as amended. According to the Act:

> Such written program shall set forth the terms and conditions, as well as the rights and remedies, under which goods and services will be provided to the individual.

The IWRP must contain essentially the same components as those required in an IHP, but these must be specifically applicable to vocational rehabilitation objectives. The IWRP, like the IHP, must be reviewed annually, and the client and parents or guardians of the individual involved must be allowed to participate in the reviewing process.

Despite the similarities between these requirements for IHPs and IWRPs, they are separate and distinct. The existence of one does not excuse the requirement for developing the other when two agencies, covered by these respective pieces of legislation, are providing services to the same individual.

Part II

Problem Situation

Mark did the packaging task adequately at the sheltered workshop, and his self-care skills continued to improve; however, he was unable to achieve a basic ability to handle his earnings in terms of paying bills regularly, budgeting for present necessities, or planning for future financial requirements. For this reason, a staff member at the group home continued to perform these functions on Mark's behalf.

Mark had two good friends at the group home, Jay and Steve, each of whom had a custodial job with a privately owned maintenance service. After a period of time, his friends moved out of the group home and shared a rented apartment located close by. Jay and Steve invited Mark to move in with them. The prospect appealed to Mark, and he made plans to leave the group home and move into the apartment.

These plans were short-lived; Mark's inability to handle his own finances led group home staff members to veto Mark's decision to engage in a more independent living situation. The move was further discouraged because a condition of his employment at the sheltered workshop was that Mark remain in a supervised living situation. This condition was imposed because of various problems that the sheltered workshop had experienced with persons of limited intellectual capability in independent living situations. The most salient problems that the workshop had encountered in the past included a high rate of tardiness and absenteeism among such employees.

Issues

1. Does the concept of habilitation in the least restrictive alternative possible apply to someone in Mark's position?
2. If the group home staff members are correct in their assumption that Mark couldn't be successful in a totally independent living situation, is their decision to keep him in the group home correct? Should they explore available alternatives?

Discussion

Although Mark is already in an apparently good community-based group home, the concept of habilitation in the least restrictive environment possible does not disappear upon community placement, but rather, continues to be applicable in decisions regarding choice of alternatives within the community. The Developmentally Disabled Assistance and Bill of Rights Act (Public Law 94-103, as amended) requires that:

> The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of a person's personal liberty.

This requirement is as viable in a decision between alternative community placements as it is in a decision between institutional care and a community placement. Mark's success in an independent living situation cannot be guaranteed; however, a handicapped individual should be extended the same right to try a new situation, fail, and learn by that failure, as a nonhandicapped person.

In this particular case, it appears that Mark might be able to succeed in an independent living situation except for the fact that he is unable to handle his finances. Alternatives that are less restrictive than continued placement in the group home probably exist and ought to be

explored. For example, Mark might be placed under a limited guardianship or a conservatorship whereby a staff member at the group home or some other person would continue to aid Mark in the financial aspects of his life.

The requirement of the sheltered workshop that Mark remain in a supervised living situation, denies Mark the right to habilitation in the least restrictive manner possible. First, the generalization that mentally retarded persons are more likely to be tardy or absent from work when living independently may not apply to Mark. He should be given the opportunity to prove himself to be punctual. If it becomes evident that Mark does have such a problem, it seems that a phone call to his house each morning or even a ride to work each day by a staff person would be much less restrictive, no more onerous, and probably just as effective as required placement in the group home.

Part III

Problem Situation

Mark was extremely frustrated by the circumstances in which he found himself. He discussed the problem with his cousin, Sandra, who periodically visited him at the group home. Sandra works at a research institute on a project to develop and disseminate a guide on family nutrition. Seventy-five percent of the funding for the project is received from the Department of Health, Education, and Welfare. Sandra was aware that the research institute was looking for someone to work in its mailroom to package the family nutrition guides and other materials for distribution. She knew that, because of Mark's training at the sheltered workshop, he would be able to perform the essential function of the job, and she felt that employment at the institute would solve Mark's problem by allowing him to move into the apartment with Steve and Jay.

Sandra arranged a job interview for Mark at the institute. The interviewing process used by that agency involves two steps. First, applicants are given a standardized written examination designed to measure general verbal and mathematical aptitude. This test is not specifically related to any particular job at the institute, but simply represents a means by which to assure that persons who work there have achieved a specified level of competence in these areas. Second, applicants who score well enough on the written examination are requested to return for an oral interview to determine if they are suitable candidates for the particular job in question. Mark did not get the job at the research institute because he failed to score well enough on the standardized written test to qualify for a subsequent oral interview.

Issue

1. Do the testing procedures used by the institute in its hiring process violate Mark's rights?

Discussion

The hiring procedures employed by the research institute in this case are clearly in violation of Section 504 of the Rehabilitation Act of 1973 and of the regulations promulgated to implement that Act. A recipient of federal funds may not discriminate against qualified handicapped individuals (i.e., ones who can perform the essential functions of the job in question) by use of hiring criteria that tend to systematically eliminate such persons from consideration for employment. Section 84.13 of the 504 regulation unambiguously requires that:

> (a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons unless: (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available. (b) A recipient shall select and administer tests concerning employment so as to best assure that, when administered to an applicant or employee, who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills.

In this case Mark was ready and able to perform the essential functions of the job in question. The non-job-related standardized written examination that Mark was required to take was discriminatory on the basis of his handicap and is the type of testing procedure that the regulations of Section 504 prohibit.

> The past decade has witnessed a growing public awareness of the needs and rights of physically handicapped people, and now over 23 million of America's newest grouped minority . . . [are] on the move, militantly determined never to be ignored again.
>
> *R. Brantley Cagle, Jr.* (22)

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CASE STUDY NUMBER 6

Procedural Safeguards in Education
Individualized Program Planning

Problem Situation

John and Martha Foster had an eight-year-old child, Laura, with Down's Syndrome. After having lived in a large city for almost ten years, John was notified that he would be transferred to a smaller town. John and Martha were somewhat concerned about the effect that a move might have upon the availability of special educational services for their daughter. Laura had made good academic progress in the city because of the excellent programs that were available there; they were afraid that services in a smaller town might not be adequate to maintain a good level of progress. The Fosters were assured by Laura's teacher that the smaller community would have good programs because such were mandated by state law and recent federal legislation.

Upon arriving in their new location, the Fosters became convinced that their previous fears had been justified. Although they did not know much about special education, they felt that Laura's placement, which was in a self-contained classroom with much younger and lower-level children, was inappropriate. They also knew that Laura had not been tested before she was placed, but rather, the placement was based upon information in Laura's file which had been forwarded by her previous school. When John and Martha contacted school officials to discuss their misgivings about Laura's educational placement, they were politely told that they should not concern themselves with Laura's education; that such things were better left to "professionals." The Fosters became angry at this and wrote a letter to state education officials. They received a letter back from the state officials which politely informed them there was nothing that could be done at the state level; decisions on particular placements were in the sole discretion of the local school districts.

Issues

1. Was Laura entitled to an evaluation before being placed in her new classroom?
2. Was the school correct in placing her in a program without consulting her parents?
3. What due process rights are available to Laura's parents in their disagreement with the school?
4. What responsibility does the state education agency have in assuring the proper placement of individuals in Laura's position?

Discussion

The school in this case violated the Fosters' rights. First, Laura was not evaluated before being placed in special education. Public Law 94-142

requires that children needing special education services must be evaluated before any change in placement may occur. Laura's move to the new school is certainly such a change in placement. Furthermore, the school is obligated to evaluate a child at any time upon the request of the student's parents.

Second, an individualized education program (IEP) was not developed for Laura before she was placed. This, again, is in violation of Public Law 94-142 which requires that there be an IEP for every child receiving special education. The IEP must be in writing and contain statements of:

1. the child's present levels of educational performance;
2. annual goals;
3. short-term instructional objectives (that is, the steps for reaching the goals);
4. specific services to be provided;
5. the extent to which a child will participate in regular educational programs;
6. the expected date for initiation and anticipated duration of services; and
7. objective criteria and evaluation procedures for determining whether or not the instructional objectives are being achieved.

The IEP must be developed by school officials and the parents, and the parents must approve it before services can be provided.

In addition, Laura's parents have the right to request a change in her placement. If the local education agency refuses to make such a change, Laura's parents have a right to a due process hearing before an impartial hearings officer. They also have a right to a hearing on the evaluation and IEP grounds. Public Law 94-142 provides that:

> Whenever a complaint has been received . . . , the parents . . . shall have an opportunity for an impartial due process hearing . . . (which shall include) (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions.

It is evident that the Act provides substantial safeguards to persons in the position of Laura's parents, and the school is required to inform them of such. The various procedural safeguards in education required by Public Law 94-142 are based on the assumption that parents have the right and responsibility to be involved in the education of their handicapped child. That is, parents are to be viewed as partners in education, and they are strongly encouraged by law not to leave it to the "professionals."

The state education agency has the responsibility of establishing, monitoring, and reviewing the provision of procedural safeguards by local education agencies. As well as establishing the procedures by which the local education agencies are to be guided, the state agency must also conduct an impartial review of any decision made by the local agency with regard to those procedures. The state agency failed to provide Laura's parents with this important safeguard.

It is important to note that the state education agency is not the final arbiter of such disputes. According to the Act, any party aggrieved by the findings or decision of that agency has the right to bring a civil action in either a state or federal court and have the matter finally decided in that forum.

Fortunately, advocates do not have to take optimism as an act of faith. Despite all of the cynicism that surrounds any effort to create change, whether through deinstitutionalization, mainstreaming, or normalization, concrete successes exist to sustain feelings of optimism. These include:

—Legislative, legal, and policy changes that have enabled more children with disabilities to attend public schools.

—Concise analytic reports of the important issues, including school exclusion and institutional abuse.

—New ways of thinking about services.

Further, one can witness changes in our language: Instead of privileges, we speak of rights.

Douglas Biklen (23)

CASE STUDY NUMBER 7

Individualized Program Planning

Problem Situation

A densely populated state in the southeast was becoming inundated with paperwork that seriously jeopardized the quality of services provided. This was believed to be caused by the rehabilitation legislation that requires the development of an individualized written rehabilitation program (IWRP) for every client. In order to alleviate part of this problem, the state incorporated into its computer system a program by which state vocational rehabilitation counselors could more efficiently develop written rehabilitation programs for their clients. This was believed to be a sound method because there are striking statistical similarities among various groups of handicapped persons.

This new special program worked as follows: a computer program was developed which took into account all of the relevant factors relating to the circumstances in which a handicapped person might find himself. Also included was a listing of all state resources and private resources that might be available to handicapped individuals in their vocational rehabilitation program. When a handicapped per-

son applied for state vocational rehabilitation services, he was mailed an application card which listed information including the sex, age, type of disability, nature and duration of handicap, educational level, previous work experience, previous residence, rehabilitation objectives, etc. This card was then mailed to the State Vocational Rehabilitation Department which ran the information through the computer and received a printout of all of the resources available in the state which might be relevant to that particular person's rehabilitation process. When this had been completed, the written rehabilitation program was mailed to the State Vocational Rehabilitation office located nearest to the applicant and a vocational rehabilitation counselor contacted the applicant and set up an appointment for the first meeting. When the handicapped person arrived, the counselor already had the written rehabilitation program in front of him, and was able to devote most of his time discussing the viability of the various alternatives listed on that program with the handicapped client.

Under this new program, the State Department of Vocational Rehabilitation found that it was able to serve at least twice as many clients in the same period of time as it had been able to serve under the old system. The state department discovered also that its per-client cost of developing the written rehabilitation program was drastically reduced and, therefore, more money was available to improve the vocational training programs available to handicapped clients.

Issues

1. Is the system developed by this state an appropriate means by which to implement the requirements of the Rehabilitation Act of 1973?
2. What are the purposes of the requirements for an individualized written rehabilitation program as those requirements are set forth in the Act?
3. Which of those purposes are not being adequately served by the approach developed in the state?
4. How might this computer system be integrated into an appropriate process of developing an individualized written rehabilitation program?

Discussion

Although the state has developed an apparently efficient system by which to match handicapped clients with appropriate rehabilitation services, it has failed to meet important requirements established in the Rehabilitation Act of 1973, as amended. The Act requires that an individualized written rehabilitation program (IWRP) for each handicapped individual be developed jointly by the vocational rehabilitation counselor and the handicapped individual (or, in appropriate cases, his parents or guardian). The state's system fails to take into account that it is not only the product of an IWRP that is valuable, but also the process by which it is developed. Obviously, there is no op-

portunity for consumer involvement in development of a program that is prepared in advance of the first meeting between the client and the rehabilitation counselor. This consumer involvement is an important part, in and of itself, of any rehabilitation process for the client. Not only is it important in establishing self-esteem on the part of the client, and an opportunity for self-determination, but it also serves as an essential communication device between service providers and consumers.

The requirement for an IWRP arises from a recognition that each handicapped client is unique, notwithstanding obvious superficial similarities among clients with similar handicaps. The written program must "set forth the terms and conditions, as well as the rights and remedies, under which goods and services will be provided to the individual . . . ." The IWRP must also include: (1) a statement of long-range rehabilitation goals for the individual and intermediate rehabilitation objectives related to the attainment of such goals; (2) a statement of the specific vocational rehabilitation services to be provided; and (3) the projected date for the initiation and the anticipated duration of each such service. It seems clear that these requirements can only be met on the basis of subjective factors that could not be included in the application card required by the vocational rehabilitation department, but rather, must be obtained by the rehabilitation counselor on a client-by-client basis through individual assessment of that particular client's attitudes, behavioral skills, and personality traits, etc. The information developed as a result of the system adopted might well be one valuable tool in developing a written rehabilitation program; it is clear, however, that it cannot be used to replace the IWRP developed jointly by the rehabilitation counselor, the client, and other persons who might be vitally interested in the client's well-being.

One day we may obtain such a high order of civilization that it will be regarded as the first duty of government to see to it that no man is denied — or made to suffer abridgement of his right to *life*: full, rich, abundant; *liberty*: free, undiminished by loyalty oaths and intrusions into his privacy and human dignity; and the *pursuit of happiness*: unencumbered by racial persecution, or ignorance, or the blight of poverty. In such a civilization there would be a general recognition of the right of every handicapped person to such training, rehabilitation, income assistance, legal and medical help, guidance and counseling as may be necessary to enable him to enjoy these basics in life — these "inalienable rights" — to the full of his capacity. Such a civilization would be fully aware that dignity and freedom are as precious to man as his daily bread, and as necessary, and would provide fair — as well as humane — mechanisms for safeguarding his rights.

Richard Allen (24)

CASE STUDY NUMBER 8

Problem Situation

Under a new federal program sponsored by the U.S. Department of Health, Education, and Welfare, Hillside Hospital was established in a rural area of a midwestern state. The purpose of the program is to develop a mechanism by which to provide health care to residents of rural communities and rural areas, as well as to provide emergency room services to rural inhabitants.

Hillside Hospital is a 30-bed facility that employs 100 persons, including six doctors, 18 nurses, and various support staff personnel. Although it provides some continuing care services, the main function of Hillside Hospital is to provide emergency services to rural residents until they can be transported to a hospital in a larger community. Because of its small size and limited staff, Hillside Hospital does not have any personnel who have an ability to communicate with the deaf through the use of sign language. Although the problem rarely arises, whenever a deaf patient becomes ill or is injured within the geographical area served by Hillside, he is immediately referred to a hospital in a larger community that has capability to communicate with the deaf through the use of sign language.

Roger Maxwell is a deaf adolescent who lives within the geographic area served by Hillside Hospital. Upon experiencing severe abdominal pains and high fever, Roger's parents called Hillside Hospital and requested the services of Hillside's Air Taxi to transport Roger to the hospital. On the basis of the description of symptoms given by Roger's parents over the phone, the doctor at Hillside suspected that Roger was suffering from an attack of acute appendicitis, but he could not be sure without a more specific description of symptoms. Since the doctor knew that he would not be able to communicate directly with Roger, and since there were no staff personnel who could do so, he directed the Air Taxi to transport Roger directly to a hospital in a larger community located 160 miles away from his home.

Roger was transported to the larger hospital whereupon a diagnosis of appendicitis was immediately made, and Roger's apprendix was removed only minutes before it would have burst.

Issues

1. Did Roger suffer from discrimination on the basis of handicap?
2. What piece of federal legislation is relevant to the above described situation?
3. Is a hospital like Hillside, that is designed mainly for the provision of emergency health care, covered under the federal legislation?

Discussion

Roger did suffer from discrimination on the basis of his handicap in

that for the sole reason he is deaf he was transported to a hospital some 160 miles away from his residence rather than to Hillside Hospital. As part of the Rehabilitation Act of 1973 (Public Law 93-112, as amended), Congress enacted Section 504, which provides that:

> No otherwise qualified handicapped individual in the United States . . . , shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The regulations enacted to implement Section 504 of the Rehabilitation Act of 1973, as amended, are divided into seven sub-parts. The first six sub-parts include a prohibition of general discrimination against the handicapped, and a breakdown of five specific substantive areas in which discrimination is prohibited. The seventh sub-part of the regulations describes the procedures by which the statutes and regulations are to be implemented and enforced. Included in the regulations as substantive areas in which discrimination is specifically prohibited are employment practices, program accessibility, preschool, elementary, and secondary education, post-secondary education, and health, welfare, and social services.

Sub-part (f) of the regulation which relates to health, welfare, and social services applies directly to this situation. Those provisions state specifically that:

> In providing health, welfare, or other social services or benefits a recipient may not, on the basis of handicap: . . . provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons.

Specifically, in regard to the provision of emergency treatment for the hearing impaired, the regulations provide that a recipient hospital that provides health services or benefits shall establish a procedure by which effective communications with persons with impaired hearing may be established for the purpose of providing emergency health care.

It is clear under the above facts that Hillside is receiving money from the Department of Health, Education, and Welfare and thus falls within the definition of a "recipient" for the purposes of the Section 504 regulations. As such, it has an affirmative duty to insure a mechanism by which it can communicate adequately with deaf persons in order to provide the same care and treatment that it provides to nonhandicapped persons. The fact that Hillside is a small rural hospital has no bearing on its duty to provide such services. The regulations are mandatory and unequivocal; Hillside must either provide a mechanism by which to communicate effectively with deaf patients, or place itself at risk of losing all federal monies for its programs.

In addition, since Hillside employs more than 15 persons, it has the further responsibility to provide auxiliary aids to persons with impaired sensory, manual, or speaking skills, when necessary to afford

such persons an equal opportunity to benefit from the service in question. These auxiliary aids may include, for example, brailled and taped material, interpreters for the deaf, and any other needed aids for a person with impaired hearing or vision.

Roger Maxwell was discriminated against upon the basis of his handicap. The withdrawal of all federal money from a meritorious program such as that conducted at Hillside Hospital would be a harsh and radical remedy. However, there is a practical solution that would accommodate persons in Roger's position and would not place an extremely onerous burden upon Hillside Hospital. Hillside should require one of its staff members to become proficient in the use of sign language in order to act as an interpreter for all persons with hearing impairments. Programs to teach sign language are available at almost all major universities and are of relatively short duration.

CASE STUDY NUMBER 9

PART I

Problem Situation

Nondiscrimination
Least Restrictive Alternative
Individualized Program Planning
Procedural Safeguards in Education

Matthew Johnson is a mildly retarded, six-year-old boy with cerebral palsy. He had attended a preschool program since age three; at the age of six, he was talking and could walk with the aid of crutches. His family moved to Tyler City in the Summer of 1978. Mrs. Johnson, Matthew's mother, contacted the local school district to enroll Matthew in school for the Fall. Mr. Jones, the Director of Special Education for the school district, told Mrs. Johnson that there were two possible placements for Matthew. One was Eastside School, a private, self-contained school for physically handicapped children. The second alternative was a federally subsidized program for educable mentally retarded (EMR) children in their neighborhood public school, Roosevelt Elementary School. Mrs. Johnson made appointments with the directors of each program.

Eastside School served thirty children with physical handicaps who ranged in age from 6-12. Children were placed in one of four class-

rooms (according to their ages) and received academic training as well as physical therapy, occupational therapy, and speech therapy. Since it was a self-contained school, there would be no opportunity for integration with nonhandicapped children. Although Eastside School was a private school, the school district had a contract with it to provide services for physically handicapped children; therefore the Johnsons would not have to pay tuition.

The public school EMR program was located in the basement of an older public school building. The children received academic training in their own classroom but were integrated with other children in the school for lunch, music, physical education, and recess. The director told Mrs. Johnson that since Matthew could not walk without his crutches, it would be very difficult for him to get to and from the basement classrooms.

Mr. and Mrs. Johnson would have preferred to have Matthew attend Roosevelt Elementary School, especially since their ten-year-old daughter would be going there. However, they considered the additional difficulties the architectural barriers would place upon Matthew and decided to enroll him in the self-contained school for physically handicapped children.

Issues

1. In terms of the options for Matthew's school placement, which areas of federal legislation have been violated by the Tyler City School District?
2. What are the possible penalties for violation of this legislation?

Discussion

The Tyler City School District is clearly in violation of two pieces of federal legislation. First, it is in noncompliance with Section 504 of the Rehabilitation Act of 1973, as amended. This Section provides that a handicapped individual shall not be excluded from participation in any program receiving federal financial assistance. In addition, a major requirement of the Section 504 regulations is program accessibility. That is, they specifically direct a recipient of federal funds to:

> operate each program or activity . . . so that the program or activity . . . is readily accessible to handicapped persons.

Further, they require of a recipient that:

> In choosing among available methods for meeting the (accessibility) requirements . . . , a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

The only reason Matthew did not attend his neighborhood school's federally subsidized EMR program was its physical inaccessibility. Thus, he was discriminated against, and the school district is in violation of Section 504 on these grounds.

The district is also in violation of Public Law 94-142 since it denied Matthew an educational placement in the least restrictive alternative possible. In order to be eligible for funding under this Act, the state, and in turn the local school district, must assure that to the maximum extent appropriate, handicapped children are educated with children who are not handicapped. The partially-integrated neighborhood school program would have been an appropriate placement for Matthew. He was placed in the segregated Eastside School only because of accessibility problems. Thus, the district is in violation of Public Law 94-142 because it prevented Matthew from being educated in an appropriate and more integrated setting.

Violation of Section 504 of the Rehabilitation Act of 1973 could result in the termination or suspension of all financial assistance from the Department of Health, Education, and Welfare. Violation of the Education for All Handicapped Children Act could result in ineligibility for funds provided by that Act.

PART II

Problem Situation

Matthew enrolled at Eastside School in September. The school was located five miles from the Johnson home, so Matthew was transported to and from school by bus. During the third week of school, Mrs. Johnson called Matthew's teacher to arrange a conference to discuss his program. The teacher told her that the school had not completed evaluating Matthew and that he would contact her as soon as the evaluation was completed. Another three weeks passed, and Mrs. Johnson had not heard from Matthew's teacher, so she decided to go see the director of the school. The director told Mrs. Johnson that she believed Matthew's evaluations had been completed, and she would consult the school psychologist to see if a report had been written. The following week, Matthew brought home an envelope from his teacher which contained a report entitled "Individual Education Program." The report had been prepared by Matthew's teacher and the psychologist. There was a note asking Mr. and Mrs. Johnson to read the report, sign it, and return it to the school the next day.

The Johnsons were upset by the contents of Matthew's IEP. It merely listed a schedule of his daily activities. Most of Matthew's program consisted of work on basic self-help skills, physical therapy, and speech and language therapy. Therefore, they contacted the school and made an appointment to discuss the IEP.

Issues

1. Was the method of preparation of Matthew's IEP sufficient to satisfy the requirements of such a plan as set forth in the Education for All Handicapped Children Act (Public Law 94-142)?
2. Was the content of Matthew's IEP sufficient to meet the standards of that Act?

3. Is Eastside School, as a private institution, exempt from the requirements of Public Law 94-142?

Discussion

Public Law 94-142 requires each school to:

> establish, or revise, whichever is appropriate, an individualized education program for each handicapped child at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually.

The Act specifically describes the means by which such a plan is to be devised, stating that it must be:

> developed in any meeting by a representative of the local education agency . . . who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children, the teacher, the parents or guardians of such child, and, whenever appropriate, such child.

Thus, it is evident that Matthew's parents were improperly denied participation in the development of Matthew's IEP, and the methods used to prepare the IEP therefore did not meet the standards required in the Act.

It is also apparent, under the facts of this case, that the content of Matthew's IEP fell short of the requirements. The IEP, under law, must contain:

> (A) a statement of the present levels of educational performance of (the) child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

It is clear from the above that the required content of individual education programs is extensive and specific. The mere listing of Matthew's daily activities falls far short of the standards set forth in the Act and is in violation of these requirements.

The fact that Eastside is a private facility for the handicapped does not relieve it from the requirements of the Education for All Handicapped Children Act. In cases where children are referred by local education agencies to private facilities in order to fulfill the requirements of the Act, the same standards and mandates that govern public schools also apply to private schools.

PART III

Problem Situation

Mr. and Mrs. Johnson went to Eastside School two days later and met with the director, the teacher, and the school psychologist. Mr. Johnson indicated that they were concerned because Matthew's IEP made no mention of academic programs, such as arithmetic or reading. Matthew's teacher told them that the children in the Level I class, which was Matthew's class, all received the same type of program and that the academic skills were not taught until a child was in the Level II class. Mrs. Johnson said Matthew performed well at home with regard to his self-help skills and noted that he had received three years of speech and language training at the preschool he had attended previously; in addition, he had begun training in arithmetic and reading skills.

The school psychologist told the Johnsons that he had evaluated Matthew using a standardized intelligence test and had interpreted the the test results himself. He felt that the program plan was appropriate for Matthew. Mr. Johnson asked if they could see a copy of Matthew's evaluation in order to understand the school's rationale for the IEP. The psychologist told them that the records were confidential and could not be released to them. Later that afternoon, the Johnsons called the director of the school and told her that they did not feel Eastside School was the best placement for Matthew. The director suggested that the parents remove Matthew from their program and contact the district's Special Education Director, Mr. Jones.

Mrs. Johnson called Mr. Jones and told him that they wanted to place Matthew in a different program that was more suitable to his needs. Mr. Jones said he would contact Eastside School and get a copy of their evaluation in order to decide what would be the most appropriate placement for Matthew. Mr. Jones called back a few days later and said he had reviewed Eastside's evaluation of Matthew and agreed with their recommendations. Mrs. Johnson said that she and her husband disagreed with the evaluation and would like another evaluation done. Mr. Jones said that it was not the district's responsibility to re-evaluate children and that the Johnsons would have to employ a private psychologist to evaluate their son. He said that when the re-evaluation was completed, he would review both evaluations and make a decision. He added that until a decision was made as to the most appropriate school placement, Matthew would have to remain at home.

Issue

1. In what ways were procedural safeguards ignored in (a) evaluation procedures, (b) confidentiality of and access to information; and (c) change in educational placement?

Discussion

With regard to evaluation procedures, Public Law 94-142 says that no

single test may be the sole criterion for determining an appropriate educational placement for a child. In this case, no formal evaluation was done prior to his initial placement. When the parents requested a change in placement, the Special Education Director said he agreed with the recommendations based upon the one standardized intelligence test.

Other information, such as that concerning the child's adaptive behavior at home and school, must be obtained and considered in addition to test results. If the school had met with the Johnsons in a formal IEP meeting at the beginning of the school year, the parents could have informed them of Matthew's performance at home and in his previous school placement.

Interpretation of evaluation information and decisions about the child's placement must be made by a team of qualified persons. In no case may these be the responsibility of a single individual. Even though the Special Education Director reviewed the school psychologist's evaluation, this is not sufficient to comply with the statement "a team of qualified persons."

In regard to confidentiality of and access to information, all education agencies must permit parents to inspect and review any personally identifiable information pertaining to their child. The school psychologist was not in error when he told the parents that his evaluation was confidential; but such confidentiality does not apply to the parents of a child.

Parents may challenge the school's evaluation if they believe that their child has not received a fair assessment. Matthew's parents have a right in this instance to an independent evaluation of Matthew's placement. The school district is required to pay for this evaluation unless it proves in a hearing that its evaluation was appropriate. Throughout the course of any proceedings involving Matthew, he must be maintained in his present educational program.

CASE STUDY NUMBER 10

Nondiscrimination

Problem Situation

The State of Oceanside enacted a statute which excludes from the statutory definition of a developmentally disabled person anyone who: (1) requires custodial care; (2) is without clean bodily habits; (3) is not responsive to directions; or (4) lacks means of intelligible communication. Consequently, such persons were denied access to special programs and services available to the "developmentally disabled."

Enactment of this statute was considered a practical necessity by the Oceanside legislature. It reasoned that the money at its disposal was insufficient to provide programs for persons with such severe disabilities, and that any attempt to do so would cause the programs provided to less severely handicapped persons to be watered down to an extent that these people would not be adequately served. The legislature determined that it had a responsibility to "put the money where it would do the most good" by developing adequate programs for people with mild to moderate handicaps who were more likely to respond to, and benefit from, these programs.

The result of the statute was that the state of Oceanside was indeed able to develop excellent educational, vocational, and medical habilitative services for its mild to moderate handicapped population. Severely handicapped individuals, who were excluded from the definition of developmentally disabled, were provided only basic custodial care in institutional settings.

Issues

1. In light of the legislature's perceptions of Oceanside's limited resources available to provide services for the handicapped, did the legislature make an appropriate choice?
2. Is prioritizing among handicapped populations based upon the severity of the handicap and probably responsiveness to treatment allowable under the relevant pieces of federal legislation?

Discussion

It is difficult to imagine a legislative scheme that systematically violates more of the requirements of federal legislation than this one. The requirements of the federal legislation are mandatory, not permissive. A state legislature that wishes to continue to receive federal funds for any of its programs **must** provide adequate educational, vocational, health, welfare, and social services as required by the legislation for **all** handicapped persons on a nondiscriminatory basis. A state may not simply define away a significant portion of its handicapped population by legislative fiat on the basis of what it perceives to be practical necessity. A state must strictly adhere to the definitions of eligible persons which are contained in the three pieces of federal

legislation. (**See**, Education for All Handicapped Children Act, Public Law 94-142; Rehabilitation Act of 1973, Public Law 93-112, as amended; and Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103, as amended.)

The Rehabilitation Act of 1973 (Public Law 93-112, as amended) is the only one of these three pieces of legislation which does not require all services authorized under it to be provided to all handicapped persons. Eligibility for vocational rehabilitation services under this Act is limited to persons who may be expected to achieve employability; however, any determination of ineligibility must be made on a case-by-case basis after thorough analysis and, further, the determination must be reviewed annually. Such a determination cannot be made arbitrarily to exclude a general class of handicapped individuals.

I am convinced disabled people will succeed, as blacks and women have before them, in raising the consciousness of America to their needs, problems, concerns—and to their abilities . . . . This will happen when businessmen recognize the contributions disabled workers can make, contributions they cannot now see. It will happen when educators perceive instruction as much a matter of nurturing strengths as alleviating weaknesses. It will happen when legislators conceive laws not to pacify disabled activists with symbolic language but to solve problems with enforceable requirements. It will happen, in the end, when the average citizen looks at a woman in a wheelchair, a man with a hearing aid, a child with crutches, not as people who can't but as people who can, seeing not the chrome and wires and wood so much as the individual and unique qualities that make someone human. It will happen, in the words of Robert Kennedy, when people ask not "Why?" but "Why not?"

Frank Bowe (25)

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